UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA, Plaintiff, and the COMMONWEALTH OF VIRGINIA, Plaintiff-Intervenor, v. ATLANTIC WOOD INDUSTRIES, INC., ATLANTIC METROCAST, INC., Defendants	)	2:19CV109 CIVIL ACTION NO. ~~2:18CV-~~
and The COMMONWEALTH OF VIRGINIA, Plaintiff, v. UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, Defendant.	)	2:19CV109 CIVIL ACTION NO. ~~2:18CV-~~

CONSENT DECREE

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I. BACKGROUND

A. The United States of America on behalf of the Administrator of the United States Environmental Protection Agency and the Secretaries of the United States Department of the Interior acting by and through the U.S. Fish and Wildlife Service and the United States Department of Commerce acting by and through the National Oceanic and Atmospheric Administration,[1] filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Atlantic Wood Industries, Inc. Superfund Site in Portsmouth, Virginia, together with accrued interest; (2) performance of certain response actions by Atlantic Wood Industries, Inc., and Atlantic Metrocast, Inc., at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended); and (3) compensation and redress for the release of hazardous substances resulting in Natural Resource Damages, as well as reimbursement of injury assessment, restoration planning, and related costs.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Virginia of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for

[1] Definitions for terms and parties not found in this Section I appear in Section IV, *infra*.

the Site, and EPA provided the Commonwealth with an opportunity to participate in such negotiations.

D. The Commonwealth has intervened in the instant action pursuant to Va. Code § 10.1-1186.4, alleging that Settling Defendant and the Settling Federal Agencies are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, the Virginia State Water Control Law ("SWCL"), Va. Code §§ 62.1-44.2, et seq., and the Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq. The Commonwealth seeks from Settling Defendant and the Settling Federal Agencies reimbursement of certain past and future response costs, maintenance of the Remedial Action at the AWI Property, adherence to certain Institutional Controls, and other commitments as set forth in this Consent Decree, as well as the recovery of Natural Resource Damages and related costs.

E. The Parties do not contest the Commonwealth's Motion to Intervene. Potential counterclaims of AWI, the Commonwealth of Virginia, and the United States on behalf of the Navy are deemed filed and some or all of the allegations in such counterclaims are deemed denied.

F. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), the National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI") were notified on June 17, 2009, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the Natural Resources under federal trusteeship and the Natural Resource Trustees were encouraged to participate in the negotiation of this Consent Decree.

G. Settling Defendant does not admit any liability to the United States or the Commonwealth of Virginia ("Plaintiffs") arising out of the transactions or occurrences alleged in the complaint, including but not limited to the scope of the Site, as amended by the final Record of Decision ("2007 ROD"), executed on December 21, 2007, nor does Settling Defendant acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, nor any damage to Natural Resources. Settling Federal Agencies as identified in Section IV do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendant or any claim asserted by the Commonwealth. The Commonwealth does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendant or any claim or counterclaim asserted by the Settling Federal Agencies.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, AWI, acting pursuant to an Administrative Order by Consent entered into on July 2, 1987, commenced a Remedial Investigation and Feasibility Study for Operable Unit ("OU") 1 of the Site pursuant to 40 C.F.R. § 300.430.

J. In 1995, EPA issued a Record of Decision ("1995 ROD") for soil and dense non-aqueous phase liquid ("DNAPL") creosote at the Site. However, EPA determined that further investigation was necessary and EPA conducted a focused feasibility study for the soil and

DNAPL. EPA also conducted remedial investigations and feasibility studies for groundwater and river sediment.

K. Once all three feasibility studies were completed, EPA published notice of the availability of a proposed plan, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, for remedial action for Operable Units 1, 2 and 3 – i.e., the entire Site – on July 11, 2007, in the *Virginian-Pilot*, a major local newspaper of general circulation. EPA provided an opportunity for the public to provide oral and written comments on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Hazardous Site Cleanup Division, EPA Region III, based the selection of the response action.

L. The decision by EPA on the remedial action being implemented at the Site is embodied in a final Record of Decision ("2007 ROD"), executed on December 21, 2007, which amended the 1995 ROD. The Commonwealth had a reasonable opportunity to review and comment and the Virginia Department of Environmental Quality issued a letter of concurrence, with certain reservations, regarding the selected remedy. The 2007 ROD includes EPA's responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

M. EPA issued two Explanations of Significant Differences ("ESD") to the 2007 ROD. The first ESD, issued August 6, 2012, documented EPA's determination that the volume of sediment requiring dredging was significantly greater than what EPA had estimated in 2007 and increased the cost estimate. The second ESD, issued on September 17, 2018, adjusted the size and location of the landfill at the Site that will contain contaminated sediment dredged from

the River as part of the Remedial Action, increased the cost estimate and documented other modifications to the remedial action in the 2007 ROD.

N. A lien in favor of EPA pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), was recorded in the Office of the Circuit Court Clerk for the City of Portsmouth, Virginia, on July 3, 2007, and in the Office of the Clerk for this Court on May 18, 2007. At the time of filing, the total value of this EPA Lien was estimated to be $49,591,131.61, which included estimated past costs of $9,591,131.61 and estimated future costs of $40,000,000.

O. EPA and the Commonwealth have reviewed the Financial Information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, EPA and the Commonwealth have determined that Settling Defendant has limited ability to pay for response costs incurred and to be incurred at the Site.

P. AWI has filed a petition for review in the United States Court of Appeals for the District of Columbia captioned *Atlantic Wood Industries, Inc. v. United States Environmental Protection Agency*, No. 08-1111, challenging certain aspects of the 2007 ROD, and Settling Defendant agrees to file for dismissal of such action within 30 days after entry of this Consent Decree.

Q. The Trustees for the Site analyzed EPA's and other available data to assess potential injuries to Natural Resources and their services in order to quantify both injuries and appropriate compensation for Natural Resource Damages. The Trustees then entered into

negotiations with Settling Federal Agencies for implementation of a restoration project, described in Appendix E, to be funded by Settling Federal Agencies.

R. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site, will provide payment for required restoration to address injuries to the environment and lost services due to the release of hazardous substances and reimbursement of Commonwealth and federal costs; will avoid prolonged and complicated litigation between the Parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby Ordered, Adjudged, and Decreed as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367(a) and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue lies in the Eastern District of Virginia, Norfolk Division, pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c).

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the United States, the Commonwealth, and the Settling Defendant. Any change in ownership or corporate or other legal status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

"AWI Environmental Covenant" shall be the covenant required in Section VIII to be consistent with and recorded under the Virginia Uniform Environmental Covenants Act, Va. Code § 10.1-1238, and its implementing regulation, 9VAC15-90, substantially in the form attached as Appendix D.

"AWI" shall mean Atlantic Wood Industries, Inc.

"AWI Operation and Maintenance" or "AWI O&M" shall mean all O&M activities that Settling Defendant is obligated to perform under this Consent Decree on AWI Property as determined by EPA in consultation with the Commonwealth pursuant to Section VI to maintain the effectiveness of the Remedial Action consistent with the 2007 ROD Section 11.2.17 and Appendix

C, and all activities required to maintain and monitor the effectiveness of the Remedial Action on AWI Property, including monitoring and enforcement of Institutional Controls.

"AWI Property" shall mean any and all portions of the Site owned by Settling Defendant as of the date of lodging of this Consent Decree, excluding the New Land, as shown on Appendix A. In the event of a transfer of some or all of the AWI Property pursuant to the requirements of Section VIII, the Consent Decree may be modified to revise this definition but only with Plaintiffs' written consent.

"AWI Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"Commonwealth" shall mean the Commonwealth of Virginia.

"Commonwealth Future Groundwater Treatment Costs" shall mean the costs of operation and maintenance of groundwater treatment facilities in connection with the AWI Site in the event EPA determines that treatment of groundwater will be necessary.

"Commonwealth Future Response Costs" shall mean Response Costs incurred and to be incurred by the Commonwealth in connection with the AWI Site after April 23, 2018, exclusive of Commonwealth Future Groundwater Treatment Costs.

"Commonwealth Past Response Costs" shall mean Response Costs incurred by the Commonwealth in connection with the AWI Site through April 23, 2018.

"Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV). In the event of conflict between this Consent Decree and any appendix, this Consent Decree text shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DNAPL" shall mean dense non-aqueous phase liquid.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court's docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities of the United States.

"EPA Lien" shall mean the lien in favor of EPA pursuant to Section 107(l) of CERCLA, as amended, that was recorded in the Clerk's Office of the Circuit Court of the City of Portsmouth, Virginia ("Clerk's Office") on July 3, 2007 as Instrument No. 070 014208 and in the Office of the Clerk for this Court on May 18, 2007 at Docket No. 2:07-mc-00007-JBF-TEM, and as will be adjusted as reflected herein and referenced in Section IX of this Consent Decree.

"EPA Response Costs" shall be all response costs incurred by EPA with respect to the Site through the Effective Date and all EPA Remedial Action costs.

"2012 Explanation of Significant Differences" or "2012 ESD" shall mean the Explanation of Significant Differences ("ESD") that EPA issued on August 6, 2012. The 2012 ESD, among other things, documented an increase in the estimated costs of cleanup of the Site to $98.2 million,

based on EPA's determination that the volume of soils requiring treatment and sediments requiring dredging as part of the Site cleanup was significantly greater than EPA's estimate in 2007.

"2018 Explanation of Significant Differences" or "2018 ESD" shall mean the draft Explanation of Significant Differences that EPA issued on September 17, 2018. The 2018 ESD, among other things, proposed to modify the selected remedy described in the 2007 ROD by: (i) adjusting the size and location of the landfill at the Site that will contain contaminated sediment dredged from the River as part of the Site cleanup; (ii) providing for an improved cap over areas of the AWI property that are currently being used by AWI; and (iii) including the construction of new concrete foundations on top of the landfill to replace ones being buried in the landfill and running electrical power to the new locations. It also increased the cost estimate to approximately $126.6 million.

"Federal Trustees" shall mean the United States Department of the Interior ("DOI"), the United States Fish and Wildlife Service ("USFWS"), the United States Department of Commerce ("DOC"), and the National Oceanographic and Atmospheric Administration ("NOAA").

"Financial Information" shall mean those financial documents identified in Appendix F.

"Institutional Controls" shall mean the AWI Environmental Covenant and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Materials at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Insurance Information" shall mean those insurance documents provided to EPA by Settling Defendant identified in Appendix F.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource" or "Natural Resources" shall have the same meaning provided in Sections 101(16) and 107(a)(4)(c) of CERCLA, 42 U.S.C. §§ 9601(16) and 9607(a)(4)(C), and applicable regulations at 43 C.F.R. Part 11, as well as applicable Virginia law, and shall include land, fish, wildlife, biota, air, water, groundwater, sediments, wetlands, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the Commonwealth of Virginia.

"Natural Resource Damages" or "NRD" means any damages recoverable by the United States and/or the Commonwealth of Virginia on behalf of the public for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or

replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15, as well as applicable state law.

"Net Proceeds" shall mean, in connection with the Commonwealth's sale of the New Land under Paragraph 38.a, all consideration received by the Commonwealth from the sale of the New Land, not including (i) any reasonable closing costs paid regarding the sale; (ii) any reasonable broker's fees regarding the sale; and (iii) any state and/or municipal transfer taxes regarding the sale.

"Net Rental Income" shall mean, in connection with the Commonwealth's rental of the New Land under Paragraph 38.b, all consideration received by the Commonwealth from the rental or leasing or other use of the New Land, not including (i) any reasonable transaction costs associated with the rental, such as attorneys' fees and other similar expenses and (ii) any reasonable broker's fees regarding the lease or other rental arrangement.

"New Land" shall mean the waterfront area, some or all of which was previously submerged, comprised of (1) dredged contaminated sediment consolidated behind the Sheet Pile Wall, and (2) submerged bottomlands to the east and south of the Sheet Pile Wall, as depicted on the map attached as Appendix A and to be transferred to the Commonwealth of Virginia via quit claim deed in accordance with this Consent Decree.

"Nonrecourse Liability" refers to the reduced CERCLA liability of Settling Defendant in Section IX (Judgment and Notice of Lien) that is secured by the EPA Lien on the AWI Property and for which Settling Defendant has no personal liability. EPA can recover no deficiency from

Settling Defendant for the Nonrecourse Liability apart from enforcing the rights against the AWI Property granted to EPA by the EPA Lien, except in the event of bankruptcy, where bankruptcy law shall govern. Nonrecourse Liability pertains only to the CERCLA Liability in Section IX and not to any other potential future liability of AWI under Plaintiffs' Reservations of Rights or other provisions in the Consent Decree.

"NRDA" shall mean Natural Resource Damage Assessment.

"NRDA Costs" shall mean costs for the NRDA and related activities incurred by NOAA and DOI.

"NRD Costs" shall mean the NRDA Costs incurred by the Federal Trustees and costs to be paid to the Commonwealth in connection with the Restoration Project.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the Remedial Action at the Site, consistent with Section 11.2.17 of the 2007 ROD, and any subsequent amendments or ESDs to that ROD, including monitoring and enforcement of Institutional Controls Site-wide.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower-case letter.

"Parties" shall mean the United States, on behalf of EPA, the Federal Trustees, and the Settling Federal Agencies; the Commonwealth of Virginia; and the Settling Defendant.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals set forth in Section 11.2 of the 2007 ROD.

"Plaintiffs" shall mean the United States, on behalf of EPA, and the Commonwealth of Virginia.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

"2007 Record of Decision" or "2007 ROD" shall mean the EPA Record of Decision relating to the Site signed on December 21, 2007, by the Director of the Hazardous Site Cleanup Division, EPA Region III and all attachments thereto.

"Remedial Action" shall mean all activities EPA and other parties have performed, and will perform, to implement the 2007 ROD, the 2012 and 2018 ESDs, and any amendments to the 2007 ROD and subsequent ESDs.

"Response Costs" shall mean all costs of response as the term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) related to the Site that Plaintiffs have incurred or will incur plus accrued interest on all such costs.

"Restoration Project" shall mean the oyster restoration developed by the Commonwealth, with the Federal Trustees serving as advisors, to compensate for Natural Resource Damages, which is further described in Appendix E.

"River" shall mean the Southern Branch of the Elizabeth River in Portsmouth, Virginia.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean Atlantic Wood Industries, Inc. and Atlantic Metrocast, Inc., and their successors and assigns.

"Settling Federal Agencies" shall mean the Department of the Navy and the Department of Defense.

"Sheet Pile Wall" shall mean the containment wall made of steel pipe and sheet piles constructed at or near the east end of the AWI Property in the River to contain contaminated

dredged sediments and prevent DNAPL migration, as further described in Section 11.2.1 of the 2007 ROD.

"Site" shall mean the Atlantic Wood Industries, Inc. Superfund Site, encompassing approximatcly 50 acres of land with contaminated soil located along industrializcd watcrfront adjacent to the River in Portsmouth, Virginia. The Site also includes the area of approximately 30 to 35 acres from which contaminated river sediment was dredged in the area of the River generally extending from the AWI Property east to the navigational channel, north to the eastern-most part of the PER Property and south into the area of the River adjacent to the Southgate Annex of the Norfolk Naval Shipyard. The Site also includes the New Land and contaminated groundwater located beneath and/or emanating from the Site.

"South Bulkhead" shall mean the southwesterly 120 foot-long portion of the Sheet Pile Wall, beginning at the current shoreline of the river, immediately adjacent to the Southgate Annex of the Norfolk Naval Shipyard. The South Bulkhead, which is identified on the map in Appendix A, is supported by tie-backs while other areas of the Sheet Pile Wall are supported by batter piles.

"Subparagraph" shall mean a portion of the Paragraph commencing with a small letter or number.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Trustees" or "Natural Resource Trustees" shall mean the Federal Trustees and VADEQ acting on behalf of the Commonwealth of Virginia, Secretary of Natural Resources.

"United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including EPA and the Settling Federal Agencies.

"VADEQ" shall mean the Virginia Department of Environmental Quality and any successor departments or agencies of the Commonwealth.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material", "hazardous substance", "hazardous waste", or "solid waste" under Va. Code § 10.1-1400.

V. GENERAL PROVISIONS

5. Objectives of the Parties. By entering into this Consent Decree, the mutual objectives of the Parties are: (i) for Settling Defendant to perform AWI O&M and implement necessary Institutional Controls, as set forth in the 2007 ROD, the 2012 and 2018 ESDs, and any amendments to the 2007 ROD or subsequent ESDs, and to embody those commitments in the AWI Environmental Covenant and Appendix C; (ii) for Settling Defendant to make a cash payment over time and render other consideration as set forth in this Consent Decree to resolve its alleged liability under CERCLA Sections 106 and 107(a), 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site as provided in the Covenants by Plaintiffs, Section XVII, and subject to the Plaintiffs' Reservation of Rights, Section XVIII; (iii) for Settling Defendant and Settling Federal Agencies to provide compensation for Natural Resources Damages and for reimbursement of NRD Costs; (iv) to resolve any potential counterclaims of Settling Defendant against the United States and the Commonwealth; (v) to resolve CERCLA claims against the Settling Federal Agencies for past and

future response costs and Natural Resource Damages to the extent set forth in this Consent Decree; and (vi) to provide for dismissal of claims that have been asserted by Atlantic Wood Industries in a separate action against the United States.

6. Commitments by Settling Defendant and Settling Federal Agencies. Settling Defendant shall perform all of its commitments in this Consent Decree, including, without limitation, to maintain and adhere to Institutional Controls at the Site and to perform AWI O&M as provided herein. Settling Defendant agrees to the continuation of the EPA Lien and to the retention of the Nonrecourse Liability under CERCLA Section 107(l) secured thereby, both to be reduced as set forth in Section IX, to provide access as set forth herein, and to pay the United States and the Commonwealth for Response Costs as provided in this Consent Decree. Settling Defendant relinquishes any claim to New Land at the Site as of the Effective Date. After entry of this Consent Decree, Atlantic Wood Industries shall dismiss its petition for review now pending in the United States Court of Appeals for the District of Columbia under Case No. 08-1111. Settling Federal Agencies shall, as provided in this Consent Decree, pay EPA for Response Costs and the Commonwealth for its Response Costs and shall further pay the NRD Costs.

VI. AWI O&M

7. AWI O&M. Settling Defendant shall conduct and complete the AWI O&M on the AWI Property according to the following:

a. Settling Defendant shall perform AWI O&M activities on the AWI Property, including all activities listed below, and shall adhere to the requirements and performance standards in Appendix C. Settling Defendant shall submit to EPA for approval, in consultation with the Commonwealth, an O&M Plan for AWI O&M activities and perform AWI

O&M as long as it remains an owner of the AWI Property and until EPA, in consultation with the Commonwealth, approves the transfer of the O&M obligation to a third party. Settling Defendant shall at a minimum perform the following AWI O&M components and adhere to the performance standards and requirements of Appendix C:

1. Maintain any wetland areas on the AWI Property.

2. Monitor the portion of the Sheet Pile Wall at the South Bulkhead, including regular walking inspections (but not including dive inspections or monitoring requiring special expertise, as the same is determined by EPA in consultation with the Commonwealth), and provide notice to VADEQ and EPA if significant cracks or deterioration or similar conditions are observed;

3. Perform routine maintenance of the portion of the Sheet Pile Wall at the South Bulkhead, including repair of the coating, but not including, as may be determined by EPA in consultation with the Commonwealth, repairs requiring special expertise or significant reconstruction necessary due to failure from the design, and/or construction of the Sheet Pile Wall or end-of-life replacement activities;

4. Maintain the 4-inch stone protective layer and the 12-inch impermeable cap and address ruts, depressions, and other events that could lead to compromised integrity of the cap;

5. Maintain the soil cover and the stormwater management system that is required on the AWI Property pursuant to Section 11.2.12 of the 2007 ROD.

b. Appendix C, the O&M Plan to be submitted under Appendix C, and the O&M performance standards and requirements contained therein and in this Section may be modified from time to time as set forth in Section XXVI (Modification) below.

VII. NEW LAND; ACCESS TO AWI PROPERTY AND NEW LAND

8. As consideration for Plaintiffs' covenants not to sue, Settling Defendant agrees to relinquish its claim to ownership of and to transfer the New Land as delineated on Appendix A to the Commonwealth via a quit claim deed within 30 days of the Effective Date. Additionally, Settling Defendant agrees to relinquish its claims to ownership of submerged bottomland. The Settling Defendant shall cooperate in the development of any documentation required to relinquish such claims and demonstrate that the Commonwealth holds title to the New Land and any remaining submerged bottomland on the AWI Property, free of any claim or right of the Settling Defendant, and shall have any and all rights to lease, rent or sell the New Land. Settling Defendant is relinquishing these ownership claims as part of its settlement contribution, and the New Land includes waterfront property and access that may be of value to the Commonwealth.

a. Settling Defendant agrees to provide an easement for the Commonwealth and third parties to access the New Land as provided in Section VIII, Paragraph 13.c, and as depicted on Appendix B.

b. Settling Defendant shall have waterfront access to the River through the South Bulkhead on the waterfront of the AWI Property. The use of the New Land by the Commonwealth, its tenants or assigns or transferees will be coordinated with Settling Defendant to ensure adequate access is maintained during Settling Defendant's loading operations.

9. The following access provisions are required on the AWI Property:

a. The Settling Defendant shall, commencing on the date of lodging of the Consent Decree, cooperate with and provide access (including routine maintenance of any roadways used to provide such access) to the United States and the Commonwealth, and their representatives, contractors, and subcontractors, at all reasonable times to the AWI Property and New Land, to conduct and maintain any and all Remedial Actions conducted pursuant to the 2007 ROD, the 2012 and 2018 ESDs, and any amendments to the 2007 ROD and subsequent ESDs, and for implementation of O&M and other response actions, including, but not limited to, the following activities:

1. Installation of a soil cover over contaminated areas, as required by Section 11.2.10 of the 2007 ROD and further described in the 2012 and 2018 ESDs;

2. Permanent consolidation of dredged contaminated materials from the River to the west of the Sheet Pile Wall and to the landfill cell on the east portion of the AWI Property (including the western landfill (CA2) identified in Appendix A);

3. Installation of any stormwater controls;

4. Groundwater monitoring and, if necessary, treatment; and

5. Any O&M activities (including replacement of the Sheet Pile Wall).

b. The Settling Defendant acknowledges that it must continue to provide access and that providing access for the installation of the soil cover/cap and any stormwater controls will involve moving equipment, buildings, and materials in a timely manner, such that the United States does not incur delay costs due to a lack of necessary access to the AWI Property. The facilities to be moved include Settling Defendant's office building and other facilities, but excludes those buildings or facilities that currently exist and that have concrete foundations or

concrete slabs that allow EPA to construct the cap to adjoin the foundations and/or slabs to provide a complete cover of contaminated material and to prevent infiltration of rain water. AWI can modify current structures that have crawl spaces by adding concrete slabs in the crawl spaces that at a minimum match EPA's planned cap elevation if such modifications allow EPA to construct the cap to adjoin the slab and if EPA first approves the modifications to ensure consistency with the Remedial Action. These modifications must be complete by the time EPA constructs the cap. Until construction of the landfill cap is complete, the United States, the Commonwealth, and Settling Defendant shall continue to conduct weekly conference calls to discuss construction schedules and construction phasing, and to provide Settling Defendant with a minimum of 30 calendar days' notice and more if possible so that Settling Defendant can move equipment, buildings, materials, etc. in a timely manner. EPA will provide 120 calendar days' advance notice for moving Settling Defendant's office building. The calls or meetings will be scheduled at mutually convenient times and EPA may agree to alter the weekly schedule to a lesser frequency if activity at the Site so warrants or for other reasons. Settling Defendant's failure or inability to make necessary moves in a timely manner, following at least 30 calendar days' notice, that results in the United States incurring additional costs shall be considered non-compliance with this Consent Decree.

c. Additionally, Settling Defendant shall provide access to conduct any activity provided for in this Consent Decree or provided under CERCLA, including, but not limited to, the following activities:

1. Monitoring the Remedial Action;

2. Verifying any data or information submitted to the United States or the Commonwealth;

3. Conducting investigations regarding contamination at or near the Site;

4. Obtaining samples;

5. Assessing the need for, planning, or implementing additional response actions at or near the Site;

6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendant or its agents, consistent with Section XXI (Access to Information);

7. Assessing Settling Defendant's compliance with the Consent Decree;

8. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Consent Decree;

9. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls; and

10. Reviewing the Site at least every five years to determine whether the Remedial Action is protective of human health and the environment as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, and implementing any response action deemed necessary as a result of that review.

d. EPA agrees to provide a certificate of insurance from its primary contractors at the Site upon request by AWI.

VIII. INSTITUTIONAL CONTROLS AND ENVIRONMENTAL COVENANT

10. Institutional Controls. Commencing on the date of lodging of the Consent Decree, the Settling Defendant shall not use the AWI Property in any manner that EPA, in consultation with the Commonwealth, determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials; or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action and O&M. These use restrictions shall include, but not be limited to, those specified in Section 11.2.16 of the 2007 ROD and the following:

a. The AWI Property shall not be used for residential or other non-industrial purposes (such as a day care center or agricultural development) that may present an unacceptable risk to human health from contamination remaining on-site after the cleanup is complete;

b. The groundwater shall not be used as a potable water source;

c. The groundwater shall not be pumped or otherwise altered in such a way as to cause a change in hydraulic conditions that could interfere with the ongoing protectiveness and effectiveness of the remedy;

d. The integrity of any items, materials, or structures installed or placed on the AWI Property as part of the Remedial Action, including consolidated dredged contaminated sediment, solidified DNAPL and other Waste Materials, and also caps, covers, berms, barriers, walls, trees, monitoring wells, groundwater extraction wells (if any), and associated items shall be maintained and not disturbed without the approval or EPA and VADEQ; and

e. Any activities on the AWI Property shall be conducted in such a way as to not interfere with any components of EPA's implementation of the 2007 ROD, with the 2012 and

2018 ESDs, or with any amendments to the 2007 ROD or subsequent ESDs, and in a manner to protect the health of future construction and/or industrial workers from exposure to contaminated soil (including any consolidated dredged materials), groundwater, or vapors that may intrude into a building.

11. Settling Defendant shall not remove or amend any institutional control requirements required under this Consent Decree without prior written EPA approval, in consultation with the Commonwealth, pursuant to Section 11.2.16.3.2 of the 2007 ROD, and any amendments and ESDs thereto.

12. Environmental Covenant.

a. Settling Defendant shall execute and record in the Clerk's Office the AWI Environmental Covenant, which shall: (i) grant a right of access to conduct any activity contemplated by this Consent Decree, the CERCLA response action, or future CERCLA response actions as necessary at the Site, including, but not limited to, those activities listed in Section VII, Paragraph 9, and (ii) grant the right to enforce the land/groundwater use restrictions set forth in this Section VIII, Paragraph 10, including, but not limited to, the specific restrictions listed therein, as specified in this Paragraph.

b. The AWI Environmental Covenant shall be granted to one or more of the following persons, as determined by EPA and in consultation with the Commonwealth: (i) the United States, on behalf of EPA, and its representatives; (ii) the Commonwealth and its representatives; and (iii) other appropriate grantees.

c. Within 90 days of the Effective Date, Settling Defendant shall submit to EPA and the Commonwealth for review and approval regarding the AWI Property: (i) a draft AWI

Environmental Covenant, in substantially the form attached hereto as Appendix D, that conforms to Virginia's Uniform Environmental Covenants Act and its implementing regulations; and (ii) a current title insurance commitment which shows title to the land affected by the AWI Environmental Covenant to be free and clear of all prior liens and encumbrances, save the EPA Lien (except when EPA, in consultation with the Commonwealth, waives the release or subordination of such prior liens or encumbrances).

d. Within 15 days of EPA's approval and acceptance of the draft AWI Environmental Covenant and the title commitment, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the AWI Environmental Covenant with the Clerk's Office. Within 30 days of recording the AWI Environmental Covenant, Settling Defendant shall provide EPA and the Commonwealth with a final title insurance policy and a certified copy of the original recorded AWI Environmental Covenant showing recording stamps from the Clerk's Office.

e. Within 30 days of receiving notice from EPA that additional Institutional Controls are needed, Settling Defendant shall submit to EPA for review and approval, in consultation with the Commonwealth, a draft of an amendment to the AWI Environmental Covenant consistent with Va. Code § 10.1-1246 and 9VAC15-90-50 containing additional Institutional Controls required by EPA. Within 30 days of approval by EPA of the draft amendment to the AWI Environmental Covenant document and its execution by the Commonwealth in accordance with Va. Code § 10.1-1246, Settling Defendant shall record the approved amendment to the AWI Environmental Covenant with the Clerk's Office, and provide

EPA with a certified copy of the recorded amendment within ten business days of recording such document.

13. Easements.

a. Upon the Transfer of any of the AWI Property, Settling Defendant shall create an easement appurtenant for all items in Section VII, Paragraph 8.a above to be granted to the Commonwealth or other holder acceptable to EPA, and their representatives, contractors, and subcontractors, to ensure the protectiveness of the Remedial Action with no additional consideration in the future.

b. Within 90 days of a request from EPA, Settling Defendant shall create an easement for the City of Portsmouth, Virginia to have access to maintain the storm sewer that EPA constructed as part of the 2007 ROD implementation that crosses the AWI Property from near the Elm Avenue and Veneer Road intersection to the South Bulkhead and any other associated items related to water flow which EPA requires for stormwater management at the Site.

c. Within 90 days of the Effective Date, Settling Defendant shall create an easement, in a form acceptable to the Plaintiffs, either via Elm Avenue with the agreement of the owners of other property through which access is needed, or across the AWI Property from Burtons Point Road, for the Commonwealth or any user of the New Land authorized by the Commonwealth to provide access to the New Land, as further described in Appendix B.

14. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Settling Defendant shall cooperate with EPA's and the Commonwealth's efforts to secure and ensure compliance with such Institutional Controls.

15. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access and information-gathering authorities and rights, as well as all of their rights to require additional Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

16. Notice to Successors-in-Title and Transfers of Real Property.

a. Settling Defendant shall, at least 60 days prior to any Transfer of any portion of the AWI Property located at the Site, give written notice: (i) to the proposed transferee of the Consent Decree, the AWI Environmental Covenant, and any Institutional Controls regarding the AWI Property, and (ii) to EPA and the Commonwealth regarding the proposed Transfer, including the name and address of the proposed transferee. Settling Defendant shall provide EPA and the Commonwealth at the time it gives them notice with a copy of the notice that it provided to the proposed transferee.

b. Settling Defendant may Transfer any AWI Property located at the Site only if the AWI Environmental Covenant and conditions required by Section VIII, Paragraph 12 (Environmental Covenant) have been recorded with respect to the AWI Property.

c. In the event of any Transfer of any AWI Property located at the Site, unless the United States and the Commonwealth otherwise consent in writing, Settling Defendant shall continue to comply with its obligations under this Consent Decree, including, but not limited to, the AWI Environmental Covenant, and Settling Defendant's obligation to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

IX. JUDGMENT AND NOTICE OF LIEN

17. EPA previously filed the EPA Lien with the Clerk's Office and the Clerk of this Court. At the time of filing the total value of the EPA Lien was estimated to be $49,591,131.61, which included estimated past costs of $9,591,131.61 and estimated future costs of $40,000,000.

18. As consideration for Plaintiffs' covenants not to sue in this Consent Decree, Settling Defendant accepts and consents to continuation of the foregoing EPA Lien on the AWI Property and associated retention of Nonrecourse Liability, once reduced as described herein, and waives any arguments concerning resolution of CERCLA liability, statute of limitations, or any other defenses, with respect to such reduced lien and Nonrecourse Liability. The Parties agree, and the Court finds, that the reduced EPA Lien on the AWI Property shall be valid and shall remain in effect in its reduced amount as described herein until payment is received to eliminate the reduced Nonrecourse Liability and such lien.

19. Notwithstanding the installment payments and other payments to be made by Settling Defendant pursuant to Section XII, as of the Effective Date of this Consent Decree, the Parties agree that for purposes of CERCLA Section 107(l)(2), the Setting Defendant's liability is not satisfied and it shall retain Nonrecourse Liability for $15 million in EPA Response Costs. The EPA Lien shall be adjusted accordingly within 30 days of the Effective Date. The EPA Lien and Settling Defendant's Nonrecourse Liability shall be further recalculated when the AWI Property is appraised as described in Paragraph 20 below.

20. Reduction of Settling Defendant's Nonrecourse Liability. Settling Defendant's Nonrecourse Liability and the EPA Lien shall be reduced following the ninth anniversary of the Effective Date, as follows. Thirty (30) days from the ninth anniversary of the Effective Date,

Settling Defendant shall submit to EPA the names of one or more real estate appraisers. The appraisers identified shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers and licensed by the Commonwealth of Virginia's Department of Professional and Occupational Regulation. EPA, in consultation with the Commonwealth, may, within 30 days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Settling Defendant shall, within 15 days after such disapproval, submit names of additional appraisers, which shall be subject to EPA's disapproval as provided above. Any appraisers not disapproved by EPA shall be deemed to be approved.

21. Settling Defendant shall, within 60 days after the deadline for EPA's disapproval of the proposed appraisers, obtain an appraisal of the AWI Property. The appraisal shall be performed by any appraiser deemed to be approved. The appraiser shall use industry-accepted methodologies to evaluate the fair market value of the AWI Property, based on the assumption that the Remedial Action is completed and the stormwater controls and groundwater monitoring and treatment, if any, are in place and operational.

22. Settling Defendant shall be responsible for all appraisal fees. Settling Defendant shall submit a copy of the appraisal to EPA for its review and approval pursuant to Section X (EPA Approval of Plans, Reports and Other Deliverables).

23. Upon EPA's approval of the appraisal, Settling Defendant's CERCLA Nonrecourse Liability for EPA Response Costs for purposes of CERCLA Section 107(l)(2) and the EPA Lien shall be reduced to fifty percent (50%) of the dollar amount of the approved appraisal. This reduction in Settling Defendant's Nonrecourse Liability and the EPA Lien to 50% of the appraised

value of the AWI Property may not occur before the ninth anniversary of the Effective Date of the Decree, so as to allow the Remedial Action, including groundwater monitoring, to be completed.

24. Settling Defendant may make a payment to EPA to resolve its Nonrecourse Liability under this Section at any time without penalty so that the EPA Lien is extinguished. In that event, within 90 days, EPA shall file a release of lien in the Clerk's Office and with the Clerk of this Court. The release of lien shall release the EPA Lien filed and shall not release any other lien or encumbrance that may exist upon the AWI Property.

X. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

25. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

b. EPA, in consultation with the Commonwealth, also may modify the initial submission to cure deficiencies in the submission if previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

26. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 25.a.(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 25.a.(ii), Settling Defendant shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After

sufficient to show for each contractor, vendor, or other person receiving payment from the Commonwealth the amount paid and the services or goods rendered, as well as timesheets of VADEQ employees, and similar records documenting the costs incurred.

2. If the Settling Federal Agencies in good faith question or contest any of the costs in the demand, they shall have the right to withhold payment of such disputed amount. In that event, the Settling Federal Agencies shall notify the Commonwealth within 30 days as to which costs they contest and shall follow the dispute resolution procedures in Subparagraph 35.h below. The United States, on behalf of the Settling Federal Agencies, shall pay the undisputed costs in the demand as soon as reasonably practicable after receiving the demand.

3. Settling Federal Agencies may only challenge the costs in the demand if they believe that costs identified in the demand: (a) are not Commonwealth Future Groundwater Treatment Costs as defined in this Consent Decree; (b) reflect an accounting error; (c) or are inconsistent with the NCP.

h. Dispute Resolution Procedures for Commonwealth Future Groundwater Treatment Costs. The dispute resolution procedures described in this Paragraph 35.h shall apply to all disputes between Settling Federal Agencies and the Commonwealth as to Demands for Commonwealth Future Groundwater Treatment Costs under the foregoing Paragraph 35.g. Any such dispute between the Commonwealth and the Settling Federal Agencies shall be the subject of informal negotiations for 30 days from the time of issuance of written notice of the existence of the dispute by the Settling Federal Agencies. The period for informal negotiations may be extended by written agreement between the Commonwealth and the Settling Federal Agencies. In the event that the dispute cannot be resolved informally, then the United States, on behalf of the Settling

Federal Agencies, agrees to pay the full amount set forth in the demand as soon as practicable after the end of the informal negotiation period, unless Settling Federal Agencies submit the dispute to the Court for resolution by filing a motion with the Court no later than 30 days after termination of the informal negotiation period. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested.

36. Interest. In the event that any Settling Federal Agencies payment required by Paragraph 35 is not timely paid, Interest shall be paid on the unpaid balance, commencing on the date it is due through the date of the payment.

37. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

38. Payments by the Commonwealth to EPA. The Commonwealth will allocate revenues from its ownership of the New Land as follows:

a. If the Commonwealth sells the New Land to a third party, it will direct or pay 50% of the Net Proceeds from the sale to the United States for EPA.

b. If the Commonwealth retains title to the New Land, but rents or leases the New Land to others, it will pay 50% of Net Rental Income from use of the New Lands to the United States for EPA for a period of ten years from the Effective Date.

c. Payment shall be made pursuant to Paragraph 39.a below.

39. Payment Instructions.

a. Instructions for Settling Defendant and Commonwealth Payments to the United States for the benefit of EPA. All payments required, in this Section and elsewhere in this Consent Decree, to be made to the United States for the benefit of EPA and/or in accordance with this Paragraph shall be made at https://www.pay.gov to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant, or to the Commonwealth if payment is being made by the Commonwealth, by the FLU of the United States Attorney's Office for the Eastern District of Virginia, Norfolk Division, after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Ross F. Worsham
Atlantic Metrocast, Inc.
405 E. Perry Street
Savannah, GA 31401
(912) 966-7029

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XXIII (Notices and Submissions). The Commonwealth will provide a contact to receive instructions at the time its payment obligation arises.

b. All payments made to the United States for the benefit of EPA under this Consent Decree shall reference the CDCS Number, EPA Site/Spill ID Number 03L2 and DOJ Case Number 90-11-3-580/1. At the time of any payment to EPA, Settling Defendant (or the

Commonwealth if the payment is being made by the Commonwealth) shall send notice that payment has been made to:

1. the United States, in accordance with Section XXIII (Notices and Submissions);

2. EPA, in accordance with Section XXIII (Notices and Submissions);

3. the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and

4. Docket Clerk (3RC00), USEPA, 1650 Arch Street, Philadelphia, PA 19103.

c. EPA may deposit a payment made to it under this Section either into the AWI Site Special Account or directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Atlantic Wood Industries Superfund Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a payment made by a Party under this Section directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by any Party pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

d. Instructions for Settling Federal Agencies Payments to EPA. Payment of EPA Response Costs shall be by transfer from the Department of Treasury's Judgment Fund to the Hazardous Substance Superfund, via the Federal government's inter-agency electronic funds transfer system. In making such transfer, the following reference numbers shall be included: the

U.S.A.O. file number , the EPA Region and Site/Spill Identification Number 03L2, DOJ/ENRD/EES case number 90-11-3-580/1, the DOJ/ENRD/EDS case number 90-11-3-1508, and the case civil action number. Notice of such payment shall be provided to the EPA officials identified in Section XXIII of this Consent Decree.

e. Instructions for Settling Federal Agencies Payments to DOC/NOAA. Payment of NOAA's NRDA Costs shall be by transfer from the Department of Treasury's Judgment Fund to the NOAA DARRF, via the Federal government's inter-agency electronic funds transfer system. Further instructions will be provided at the time of the transfer application. Notice of such payment shall be provided to the NOAA officials identified in Section XXIII of this Consent Decree.

f. Instructions for Settling Federal Agencies Payments to DOI. Payment of DOI's NRDA Costs shall be by transfer from the Department of Treasury's Judgment Fund to the DOI NRDAR, via the Federal government's inter-agency electronic funds transfer system. Further instructions will be provided at the time of the transfer application. Notice of such payment shall be provided to the DOI officials identified in Section XXIII of this Consent Decree.

g. Instructions for Settling Federal Agencies and Settling Defendant Payments to the Commonwealth. All payments required to be made under Section XII and this Consent Decree to the Commonwealth of Virginia should be made payable to:

Treasurer of Virginia
DEQ Receipts Control
P.O. Box 1104
Richmond, VA 23218

XIII. INDEMNIFICATION AND INSURANCE

40. Settling Defendant's Indemnification of the United States and the Commonwealth.

a. The United States and the Commonwealth do not assume any liability by entering into this Consent Decree or by virtue of any designation of the Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendant shall indemnify, save and hold harmless the United States, the Commonwealth, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States and the Commonwealth all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based on negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of the Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give the Settling Defendant notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to this Paragraph, and shall consult with the Settling Defendant prior to settling such claim.

c. Settling Defendant shall continue to carry at all times Comprehensive General Liability (CGL) insurance to cover claims by third parties, in amounts at least equivalent to its current coverage of One Million Dollars ($1,000,000) per occurrence and Two Million Dollar ($2,000,000) in the aggregate. In addition, within six months of the prefinal inspection report for the cap, Settling Defendant shall make best efforts to obtain and carry commercially reasonable appropriate insurance with limits of not less than One Million Dollars ($ 1,000,000) per incident and Two Million Dollars ($ 2,000,000) in the aggregate, to cover damage caused by Settling Defendant, or its contractors, agents, customers, or anyone in privity with it, to components of the Remedial Action, specifically including but not limited to inadvertent or accidental disturbance of the landfill cap and stormwater controls located on the AWI Property, but not including the Sheet Pile Wall. In the event Settling Defendant obtains such additional insurance, Settling Defendant shall provide EPA and VADEQ with Certificate(s) of Insurance showing insurance coverage in the specified amount that names EPA and the Commonwealth as additional insureds. In the event Settling Defendant is not able to obtain commercially reasonable appropriate insurance within six months of the prefinal inspection report for the cap, or in the event its prior policy expires and cannot be renewed, Settling Defendant shall provide notice to EPA and the Commonwealth in which it shall describe its "best efforts" to obtain such insurance, shall continue to periodically seek to obtain such insurance, and shall report its "best efforts" to do so at

review of the resubmitted plan, report, or other deliverable, EPA, in consultation with the Commonwealth, may: (i) approve, in whole or in part, the resubmission; (ii) approve the resubmission upon specified conditions; (iii) modify the resubmission; (iv) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (v) any combination of the foregoing.

27. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 25.b or due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Section XVI (Stipulated Penalties). The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding the Settling Defendant's submissions under this Section.

28. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraphs 25 or 26, of any plan, report, or other deliverable, or any portion thereof: (i) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (ii) Settling Defendant shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA or the Commonwealth. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraphs 25 or 26 shall not relieve the Settling Defendant of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

XI. REPORTING REQUIREMENTS

29. AWI O&M Reporting. AWI shall provide annual reports documenting all of its O&M activities to EPA and VADEQ in accordance with the O&M Plan approved pursuant to Section VI and Appendix C.

XII. PAYMENTS FOR RESPONSE COSTS, NRD COSTS AND RESTORATION COSTS

30. Payment by Settling Defendant for Response Costs. Settling Defendant shall pay to Plaintiffs the principal amount of $250,000 in up to ten installments, over up to nine calendar years from the Effective Date, as specified below. Each installment payment shall also include an additional sum for interest at a rate of 0.87% accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of the payment. The amounts of principal and interest have been calculated and are set forth below. Settling Defendant shall pay the first three installments to EPA under the instructions in Paragraph 39.a below and the remaining seven installments to the Commonwealth under the instructions in Paragraph 39.g. Settling Defendant shall pay the amount in accordance with the following schedule:

a. Within 30 days of the Effective Date of the Consent Decree, $26,000, including interest, to the United States for EPA;

b. Within 30 days of the first anniversary of the Effective Date, $26,000, including interest, to the United States for EPA;

c. Within 30 days of the second anniversary of the Effective Date, $26,000, including interest, to the United States for EPA;

d. Within 30 days of the third anniversary of the Effective Date, $26,000, including interest, to the Commonwealth;

e. Within 30 days of the fourth anniversary of the Effective Date, $26,000, including interest, to the Commonwealth;

f. Within 30 days of the fifth anniversary of the Effective Date, $26,000, including interest, to the Commonwealth;

g. Within 30 days of the sixth anniversary of the Effective Date, $26,000, including interest, to the Commonwealth;

h. Within 30 days of the seventh anniversary of the Effective Date, $26,000, including interest, to the Commonwealth;

i. Within 30 days of the eighth anniversary of the Effective Date, $26,000, including interest, to the Commonwealth; and

j. Within 30 days of the ninth anniversary of the Effective Date, $26,000, including interest, to the Commonwealth.

31. Payments to the United States on behalf of EPA shall be made pursuant to Paragraph 39.a below (Payments to the United States for the benefit of EPA). Notwithstanding the foregoing installment payments, Settling Defendant still will have Nonrecourse Liability for CERCLA Section 107(l) purposes, as set forth in Section IX.

32. Notwithstanding the foregoing schedule, if Settling Defendant elects to accelerate its payments it may do so and no penalty shall be assessed for such acceleration. Settling Defendant must contact the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Eastern District of Virginia, Norfolk Division, for a calculation of the proper amounts to be paid depending on what principle amounts it wishes to accelerate. Ultimately, the

United States for EPA will receive a total of $75,000 plus Interest, and the Commonwealth will receive a total of $175,000 plus Interest.

33. Settling Defendant Payment to Release the EPA Lien. If Settling Defendant makes a payment to satisfy and to release it from the EPA Lien, other than through Chapter 11 or Chapter 7 bankruptcy proceedings or similar work-out proceedings, it shall direct 90% of such payment to EPA and 10% of such payment to the Commonwealth pursuant to the instructions in Paragraph 39.a below.

34. If, however, Settling Defendant files a petition in bankruptcy or similar proceedings, and EPA receives payments through those proceedings, through filing a proof of claim or otherwise, EPA will receive 100% of such payments. The Commonwealth may file its own proof of claim in the event of such proceedings.

35. Payments by Settling Federal Agencies.

a. Payment to EPA for EPA Response Costs. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay to EPA Fifty-Five Million, Three Hundred Twenty-Five Thousand, Nine Hundred Sixty-Six Dollars ($55,325,966), in payment of Response Costs, pursuant to the instructions in Subparagraph 39.d below. EPA shall deposit the total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph in the Atlantic Wood Industries Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to the EPA Hazardous Substance Superfund.

b. Payment to the Federal Trustees for NRDA Costs. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall

pay to the Federal Trustees, pursuant to the instructions in Subparagraph 39.e and 39.f below, a total of Ninety-Four Thousand, Six Hundred Fifty-Nine ($94,659) for NRDA Costs, as described below.

1. Sixteen Thousand Five Hundred Thirty-Three Dollars ($16,533) shall be deposited into the Department of the Interior Natural Resource Damage Assessment and Restoration Fund ("DOI NRDAR"), as reimbursement for NRDA Costs incurred by DOI.

2. Seventy-Eight Thousand, One Hundred Twenty-Six Dollars ($78,126) shall be deposited into the NOAA Damage Assessment and Restoration Revolving Fund ("DARRF"), as reimbursement for NRDA Costs incurred by NOAA.

c. Payment to the Commonwealth NRD Trustee for Restoration Costs. As soon as reasonably practicable after the Effective Date, the United States, on behalf of the Settling Federal Agencies, shall pay to the Commonwealth One Million Five Hundred Thousand Dollars ($1,500,000) for performance of the NRD Restoration Project described in Appendix E pursuant to the instructions in Subparagraph 39.g below.

d. All funds paid pursuant to Subparagraph c, above, shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken. The proposed Restoration Project is described at Appendix E.

e. Settling Defendant and Settling Federal Agencies shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

f. Payment to the Commonwealth for Commonwealth Response Costs. As soon as reasonably practicable after the Effective Date, the United States, on behalf of the Settling Federal Agencies, shall pay to the Commonwealth Eight Million Five Hundred Thousand Dollars ($8,500,000) in payment of Commonwealth Past and Future Response Costs pursuant to the instructions in Subparagraph 39.g below. Such payment shall be held in a special, non-reverting fund by the Commonwealth solely for use to (i) reimburse the Virginia Emergency Environmental Response Fund for Past Response Costs incurred by the Commonwealth and (ii) fund Future Response Costs.

g. Payment to the Commonwealth for Commonwealth Future Groundwater Treatment Costs. The United States, on behalf of Settling Federal Agencies, shall pay to the Commonwealth fifty percent (50%) of the Commonwealth's Future Groundwater Treatment Costs pursuant to the instructions in Subparagraph 39.g, as follows:

1. Not more than once per calendar year, the Commonwealth shall provide Settling Federal Agencies with a written demand for Commonwealth Future Groundwater Treatment Costs that have been incurred for the period of time since the costs reflected in the prior demand. The demand shall include for the relevant period: (i) the total amount of Commonwealth Future Groundwater Treatment Costs incurred and the amount to be paid by the United States on behalf of the Settling Federal Agencies (i.e., 50% percent); (ii) an explanation as to what tasks, services, or work resulted in the costs incurred; and (iii) supporting documentation and information

least every five years after the date of such notice. The amount and type of insurance required under this Paragraph may be adjusted by the Parties under Section XXVI (Modification).

41. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of O&M activities or other response actions on or relating to the Site. In addition, Settling Defendant shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of O&M activities or other response actions on or relating to the Site.

42. Insurance. Settling Defendant shall ensure that any vessel or other user of the South Bulkhead who is a customer or vendor of, or otherwise in privity with, Settling Defendant shall carry appropriate insurance against damage to the South Bulkhead and Sheet Pile Wall. No more than ten days before such vessel or other party uses the South Bulkhead, Settling Defendant shall provide EPA and VADEQ with Certificate(s) of Insurance evidencing liability insurance coverage of no less than $2,000,000 per occurrence, naming Settling Defendant, EPA and the Commonwealth as additional insureds. The amount and type of insurance required under this Paragraph 42 may be adjusted by the Parties under Section XXVI (Modification).

XIV. FORCE MAJEURE

43. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by

Settling Defendant, or of Settling Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the AWI O&M or any other obligation of Settling Defendant under this Consent Decree, or increased costs.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify orally (i) EPA's Project Coordinator or the Director of the Hazardous Site Cleanup Division, EPA Region III and (ii) VADEQ's Project Coordinator, within 48 hours of when the Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA and the Commonwealth an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of

any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event; provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure as defined in Paragraph 43, and whether Settling Defendant has exercised its best efforts under Paragraph 43, EPA may, after consultation with the Commonwealth, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or incomplete notices under this Paragraph.

45. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations on an expedited basis. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify the Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

46. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 43 and 45. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA in Settling Defendant's notice.

XV. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Plaintiffs United States on behalf of EPA (or, if regarding NRD, on behalf of the Federal Trustees), and/or the Commonwealth, on the one hand; and Settling Defendant on the other hand, regarding this Consent Decree. Settling Defendant may not challenge in any way nor invoke these dispute resolution procedures with respect to the 2007 ROD and the 2012 and 2018 ESDs. Settling Defendant may not challenge in any way nor invoke these Dispute Resolution Procedures with respect to the decisions of the Commonwealth and the Federal Trustees regarding the funds paid for the Restoration Project. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

48. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

49. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, in consultation with the Commonwealth, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by delivering to the United States and the Commonwealth, in accordance with Section XXIII, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 50 or Paragraph 51.

b. Within 14 days after receipt of Settling Defendant's Statement of Position, EPA, in consultation with the Commonwealth, will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 50 or

51. Within seven days after receipt of EPA's Statement of Position, Settling Defendant may submit a reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 50 or 51, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 50 and 51.

50. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the 2007 ROD's provisions or the 2012 or 2018 ESDs.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA, in consultation with the Commonwealth, may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 50.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 50.c and 50.d.

c. Any administrative decision made by EPA pursuant to Paragraph 50.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and a proposed schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may, in consultation with the Commonwealth, file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Hazardous Site Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 50.a.

51. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 49.a, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute based upon the statement of position and reply, if

any, served under Paragraph 49.b. The Hazardous Site Cleanup Division Director's decision shall be binding on Settling Defendant unless, within ten days of receipt of the decision, Settling Defendant files with the Court and serves on the Plaintiffs a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may, in consultation with the Commonwealth, file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

52. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA, in consultation with the Commonwealth, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 58. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XVI. STIPULATED PENALTIES

53. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 54 and 55 to the United States and the Commonwealth, with fifty percent (50%) to be paid to EPA and fifty percent (50%) to be paid to the Commonwealth for a failure to comply with

the requirements of this Consent Decree specified below, unless excused under Section XIV (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

54. Stipulated Penalty Amounts – Payments, O&M, New Land and Access, ICs.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

Penalty Per Violation Per Day	***Period of Noncompliance***
$2,500.00	1st through 14th day
$5,000.00	15th through 30th day
$7,500.00	31st day and beyond

b. Failure to comply with requirements of Section VI (AWI O&M), Section VII (New Land; Access to AWI Property and New Land), Section VIII (Institutional Controls and Environmental Covenant), and Section XII (Payments for Response Costs).

55. Stipulated Penalty Amounts – Remaining Requirements.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 500.00	1st through 14th day
$1,000.00	15th through 30th day
$1,500.00	31st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 54.b of this Consent Decree.

56. All penalties shall begin to accrue on, as may be appropriate, the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (b) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 50 or 51 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of

separate penalties for separate violations of this Consent Decree. Following EPA's determination, and in consultation with the Commonwealth, that the Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give the Settling Defendant written notification of the same and describe the noncompliance. EPA and the Commonwealth may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding two Paragraphs regardless of whether EPA has notified Settling Defendant of a violation.

57. All penalties accruing under this Section shall be due and payable to the United States and the Commonwealth within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to the Plaintiffs under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraph 39 (Payment Instructions).

58. Penalties shall continue to accrue as provided in this Section during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the Commonwealth within 15 days of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be

owed to EPA and the Commonwealth within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 58.c.

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States and the Commonwealth into the Registry of the Court. Within 15 days of receipt of the final appellate court decision, the Clerk shall pay the balance of the account to EPA and the Commonwealth or to Settling Defendant to the extent that they prevail.

59. If the Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 56 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 57 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States or the Commonwealth may institute proceedings to collect the penalties and Interest.

60. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the AWI O&M required under this Consent Decree.

61. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of any state or federal law or

regulation, this Consent Decree, or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l); provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which it seeks a stipulated penalty under this Consent Decree.

62. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of its stipulated penalties that have accrued to it pursuant to this Consent Decree. Notwithstanding any other provision of this Section, the Commonwealth may, in its unreviewable discretion, waive any portion of its stipulated penalties that have accrued to the Commonwealth pursuant to this Consent Decree.

XVII. COVENANTS BY PLAINTIFFS

63. Covenant for Settling Defendant by United States. Except for the retention of Nonrecourse Liability as provided in Section IX (Judgment and Notice of Lien) and except as provided in Section XVIII (Plaintiffs' Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), including for Natural Resource Damages, relating to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 86. If the Financial Information or the

Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 86, is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Section XX shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' rights to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

64. Covenant for Settling Defendant by the Commonwealth. Except for the retention of Nonrecourse Liability as provided in Section IX (Judgment and Notice of Lien) and except as provided in Section XVIII, (Plaintiffs' Reservation of Rights), the Commonwealth covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq., and the State Water Control Law, Va. Code §§ 62.1-44.5 et seq., including for Natural Resource Damages, relating to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to the Commonwealth by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 86. If the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in

Paragraph 86, is subsequently determined by the Commonwealth to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Section XX shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the Commonwealth's rights to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. These covenants extend only to Settling Defendant and do not extend to any other person.

65. Covenant for the Settling Federal Agencies by EPA. Except as specifically provided in Section XVIII, (Plaintiffs' Reservation of Rights), EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

66. Covenant for the Settling Federal Agencies by the Commonwealth. Except as specifically provided in Section XVIII (Plaintiffs' Reservation of Rights), the Commonwealth covenants not to sue or take administrative action against the Settling Federal Agencies pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), the Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq., and the State Water Control Law, Va. Code § 62.1-44.5, et seq., including for Natural Resource Damages, relating to the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant

is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to the Settling Federal Agencies and does not extend to any other person.

67. Covenant for Settling Federal Agencies by Federal Trustees. Except as specifically provided in Section XVIII (Plaintiffs' Reservation of Rights), the Federal Trustees covenant not to bring administrative action against Settling Federal Agencies for NRDA Costs and Natural Resource Damages pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Site. This covenant shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to the Settling Federal Agencies and does not extend to any other person.

XVIII. PLAINTIFFS' RESERVATION OF RIGHTS

68. The United States' and Commonwealth's Reservations of Rights as to Settling Defendant. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States and the Covenant Not to Sue by the Commonwealth in Section XVII (Covenants by Plaintiffs). Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Settling Defendant with respect to:

a. Liability for a failure by Settling Defendant to meet a requirement of this Consent Decree, including but not limited to failure to adhere to Institutional Controls and perform AWI O&M as required by Sections VIII and VI, respectively;

b. Claims arising from post-lodging remedy failure;

c. Liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

d. Liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree;

e. Liability based on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the 2007 ROD and the 2012 and 2018 ESDs, or otherwise ordered by EPA, following consultation with the Commonwealth after signature of this Consent Decree; and

f. Criminal liability.

g. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 86, is false or, in any material respect, inaccurate.

h. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, the right to defend against any claims brought against them by Settling Defendant pursuant to Paragraph 77 below (Settling Defendant Claims for Post-Lodging Acts).

69. EPA's, the Federal Trustees', and the Commonwealth's Reservations of Rights as to Settling Federal Agencies. The Commonwealth reserves, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, and EPA and the Federal Trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within the Covenant Not to Sue by United States and the Covenant Not to Sue by the Commonwealth in Section XVII. Notwithstanding any other provision of this Consent Decree, the Commonwealth reserves all rights, and EPA and the Federal Trustees reserve all rights, against Settling Federal Agencies with respect to:

a. Liability for a failure by Settling Federal Agencies to meet a requirement of this Consent Decree;

b. Liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. Liability based on the ownership or operation of the Site by Settling Federal Agencies when such ownership or operation commences after signature of this Consent Decree;

d. Liability based on Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, or otherwise ordered by EPA, after signature of this Consent Decree;

e. Criminal liability.

70. Natural Resource Trustees' Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the Natural Resource Trustees

reserve the right to institute proceedings against Settling Defendant and Settling Federal Agencies in this action or in a new action seeking recovery of Natural Resource Damages, based on: (i) conditions with respect to the Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (ii) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type or unknown, or a magnitude greater than was known, to the Trustees as of the date of lodging of this Consent Decree. For purposes of this Paragraph, the information and conditions known to the Trustees shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under the control of EPA, DOI, NOAA, or the Commonwealth as of the date of lodging of this Consent Decree.

71. Waiver of Claims Against Other Parties. The Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have against all other persons for all matters relating to the Site under Sections 106, 107 and Section 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(f), including for Natural Resource Damages and for contribution; provided, however, that the Settling Defendant reserves the right to assert and pursue all claims, causes of action, and defenses relating to the Site under Sections 106 and 107 of CERCLA, including for Natural Resource Damages, against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against the Settling Defendant, including for Natural Resource Damages. Nothing in this Paragraph shall

operate to waive or release any claim or action by the Settling Defendant under any contract of insurance.

72. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all response actions authorized by law. If EPA, in consultation with the Commonwealth, determines, at any time, that the remedy selected in the 2007 ROD, the 2012 and 2018 ESDs, and any amendment to the 2007 ROD or subsequent ESD is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

XIX. COVENANTS BY SETTLING DEFENDANT AND SETTLING FEDERAL AGENCIES

73. Covenant Not to Sue by Settling Defendant. Subject to the reservations in Paragraph 77, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth with respect to the Site and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States, or the Commonwealth, under CERCLA Sections 107 or 113,

RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree;

c. claims against the United States or the Commonwealth, brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or the Commonwealth prior to the lodging of this Consent Decree, including any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans, reports, other deliverables or activities, or to any actions of the Settling Federal Agencies prior to lodging of this Consent Decree, including any activities allegedly related to the contamination of the Site, or any other pre-lodging acts of the United States or the Commonwealth;

d. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the Commonwealth of Virginia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

e. Any claims for trespass or takings under federal or state law if not covered in the foregoing subparagraphs.

f. In addition, within 15 days after entry of this Consent Decree, Settling Defendant shall, pursuant to Fed. R. App. P. 42(b), move to dismiss with prejudice its petition for review now pending in the United States Court of Appeals for the District of Columbia Circuit under Case No. 08-1111, each party to pay its own costs.

74. Covenant by Settling Federal Agencies as to EPA and Federal Trustees. Settling Federal Agencies agree not to assert any direct or indirect claim against EPA and the Federal Trustees, for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), the NOAA DARFF, the DOI NRDAR, or any other funds held by those agencies, through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by the Settling Federal Agencies in the performance of their duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

75. Covenant by Settling Federal Agencies to the Commonwealth. Settling Federal Agencies agree not to assert any claim against the Commonwealth under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of state or federal law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by the Settling Federal Agencies in the performance of their duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

76. Except as provided in Paragraph 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the Commonwealth brings a cause of action or issues an order against Settling Defendant or Settling Federal Agencies pursuant to any of the reservations in Section XVII (Covenants by Plaintiffs), other than in Paragraphs 68.a (claims for failure to meet a requirement of the Consent Decree) or 68.f (criminal liability), or Paragraph

69.a or 69.e (same), but only to the extent that Settling Defendant's or Settling Federal Agencies' claims arise from the same response action, response costs, or damages that the United States or the Commonwealth is seeking pursuant to the applicable reservation.

77. Settling Defendant Claims from Post-Lodging Acts. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, or the Commonwealth, pursuant to Va. Code § 8.01-195.3, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, or any employee of the Commonwealth, as that term is defined in Va. Code § 8.01-195.2, while acting within the scope of his or her office or employment under circumstances where the United States or the Commonwealth, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, the Commonwealth's concurrence in or objection to such selection, or the oversight or approval of Settling Defendant's plans, reports, other deliverables or activities, or to any actions of the Settling Federal Agencies prior to lodging of this Consent Decree, including any activities allegedly related to the contamination of the Site, or any other pre-lodging acts of the United States or the Commonwealth.

78. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XX. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 71 (Waiver of Claims Against Other Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the Commonwealth, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), pursuant to which Settling Defendant and Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, and Natural Resource Damages, at or in connection with the Site, by the United States and the Commonwealth

or any other person; provided, however, that if the United States or the Commonwealth exercises rights against Settling Defendant under the reservations in Section XVIII (Plaintiffs' Reservation of Rights), other than in Paragraphs 68.a (claims for failure to meet a requirement of the Decree) or 68.f (criminal liability), or the Commonwealth exercises rights (or EPA exercises administrative rights) against the Settling Federal Agencies under its reservations in Section XVIII (Plaintiffs' Reservation of Rights), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

81. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant and Settling Federal Agencies each has, as of the Effective Date, resolved liability to the United States and the Commonwealth within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the Commonwealth in writing no later than 60 days prior to the initiation of such suit or claim.

83. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the Commonwealth within ten days of service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States and the Commonwealth within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial.

84. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant and, with respect to a Commonwealth or EPA action, Settling Federal Agencies, shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVII (Covenants by Plaintiffs).

XXI. ACCESS TO INFORMATION

85. The Settling Defendant shall provide to the Plaintiffs, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding any work required. Settling Defendant shall also make available to the Plaintiffs, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the implementation of this Consent Decree. Notwithstanding any other provision in this Consent Decree, Plaintiffs retain all of their statutory and regulatory access and information-gathering authorities.

XXII. RETENTION OF RECORDS

86. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, documents, and other information (including in electronic form) ("Records") (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all requests from EPA and the Commonwealth for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA and the Commonwealth financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the Commonwealth and the time Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA and the Commonwealth upon request such insurance policies, indemnity agreements, and information.

87. Until ten (10) years after EPA issues the Preliminary Close-Out Report, Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control that relate in any manner to (i) the claims alleged in the Complaint, (ii) Settling Defendant's compliance with this Consent Decree, or (iii) potential

claims under CERCLA with respect to the Site. In addition, Settling Defendant must retain all Records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to implementation of the requirements of this Consent Decree, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the implementation of the requirements of this Consent Decree and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

88. At the conclusion of this record retention period, Settling Defendant shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the Commonwealth, or except to the extent the Records are privileged or protected as confidential business information, Settling Defendant shall deliver any such Records to EPA or the Commonwealth.

89. Plaintiffs acknowledge that the Settling Federal Agencies (a) are subject to all applicable Federal record retention laws, regulations, and policies; and (b) have certified that they have fully complied with any and all EPA and Commonwealth requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and Virginia state law.

XXIII. NOTICES AND SUBMISSIONS

90. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, and Settling Defendant, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Notices required to be sent to Plaintiffs shall be sent to EPA, the U.S. Department of Justice, and the Commonwealth, but shall only be sent to the U.S. Fish and Wildlife Service, NOAA, and VADEQ if they involve Natural Resource Damages.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-580/1

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-1508

As to EPA:

Director, Hazardous Site Cleanup Division (3HS00)
United States Environmental Protection Agency

Region III
1650 Arch Street
Philadelphia, PA 19103

and:

Randy Sturgeon (3HS23)
EPA Remedial Project Manager
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
sturgeon.randy@epa.gov

As to DOI and FWS:

Department of the Interior
Natural Resource Damage Assessment and
Restoration Program
Attn: Bruce Nesslage, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
bruce_nesslage@ios.doi.gov

and

Martha Ansty
Department of the Interior
Office of General Counsel
Winston Prouty Federal Building
11 Lincoln Street
Essex Junction, VT 05452
Martha.Ansty@sol.doi.gov

As to NOAA and DOC:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Chris Botnick, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
Chris Botnick@noaa.gov
Cc: Nancy.Berube@noaa.gov

Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel Natural Resources

	1315 East-West Highway SSMC3# Room 15107 Silver Spring, MD 20910-3282 kate.barfield@noaa.gov
As to the Settling Federal Agencies	Environmental Restoration Program Manager NAVFAC Midlant Navy [strcet address] [city and state and zip] Email:
As to the Commonwealth:	Michelle Payne Commonwealth Project Coordinator 1111 East Main Street, Suite 1500 P.O. Box 1105 Richmond, VA 23218 (804) 698-4183 michelle.payne@deq.virginia.gov Hon. Matthew Strickler Secretary of Natural Resources Commonwealth of Virginia 1111 East Broad Street Richmond, VA 23219 Chief, Environmental Section Virginia Office of the Attorney General 202 North 9th Street Richmond, Virginia 23219
As to the Settling Defendant:	Atlantic Metrocast, Inc. Attn: Ross F. Worsham, Vice President 405 E. Perry Street Savannah, GA 31401 (912) 966-7209 rworsham@atlanticmetrocast.com

91. Each report, plan, or other document submitted by Settling Defendant pursuant to this Consent Decree or Appendices shall be signed by an official of the Settling Defendant and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XXIV. RETENTION OF JURISDICTION

92. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XV (Dispute Resolution).

XXV. APPENDICES

93. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A – AWI Property Map showing New Land

Appendix B – Map of Site showing location of AWI easement for access to New Land

Appendix C – AWI Operation and Maintenance Performance Standards and Requirements

Appendix D – Draft AWI Environmental Covenant

Appendix E – NRD Restoration Project

Appendix F – Financial and Insurance Information

XXVI. MODIFICATION

94. Except as otherwise provided in this Paragraph, material modifications to this Consent Decree shall be in writing, signed by the United States on behalf of EPA, the Federal Trustees, and the Settling Federal Agencies; the Commonwealth; and Settling Defendant; and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by duly authorized representatives of the United States on behalf of EPA, the Federal Trustees, and the Settling Federal Agencies; the Commonwealth; and Settling Defendant. Non-material modification to any plan approved by either the Commonwealth or EPA that does not materially alter the requirements of those documents may be made by written agreement among the EPA Regional Project Manager, the Commonwealth Project Coordinator, and the Settling Defendant.

95. Economic hardship or changed financial circumstances of Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

96. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

97. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold

its consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

98. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXVIII. SIGNATORIES/SERVICE

99. The undersigned representative of the Settling Defendant to this Consent Decree, the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the representative of the Office of the Attorney General for the Commonwealth each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

100. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

101. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to

the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIX. FINAL JUDGMENT

102. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 30th DAY OF April, 2019.

/s/
Rebecca Beach Smith
United States District Judge

United States District Judge

The Undersigned parties enter into this Consent Decree in the matter of *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.*

FOR THE UNITED STATES OF AMERICA ON BEHALF OF EPA, THE FEDERAL TRUSTEES, AND THE SETTLING FEDERAL AGENCIES:

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

NANCY FLICKINGER
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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P.O. Box 7611
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Kent A Hanson /NF

KENT HANSON
Senior Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

By: /s/

Virginia VanValkenburg
Assistant United States Attorney
Virginia State Bar No. 33258

United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, VA 23510
757-441-6331 Office
757-441-6689 Fax
Virginia.VanValkenburg@usdoj.gov

The Undersigned parties enter into this Consent Decree in the matter of *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.*

FOR PLAINTIFF UNITED STATES OF AMERICA, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

COSMO SERVIDIO
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

MARY COE
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
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JOAN A. JOHNSON
Senior Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

The Undersigned parties enter into this Consent Decree in the matter of *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.*

FOR PLAINTIFF COMMONWEALTH OF VIRGINA,

3/6/2019
Date

MARK R. HERRING, Attorney General
STEPHEN A. COBB, Deputy Attorney General
DONALD D. ANDERSON, Senior Assistant Attorney General
PAUL KUGELMAN, Senior Assistant Attorney General
202 North 9th Street
Richmond, Virginia 23219
Telephone: (804) 786-3811
Facsimile: (804) 786-2650
pkugelman@oag.state.va.us

The Undersigned parties enter into this Consent Decree in the matter of *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.*

FOR PLAINTIFF COMMONWEALTH OF VIRGINA,

2/5/19
Date

MATTHEW J. STRICKLER
Secretary of Natural Resources
Commonwealth of Virginia

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The Undersigned parties enter into this Consent Decree in the matter of *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc. et al.*

FOR DEFENDANT, ATLANTIC WOOD INDUSTRIES:

William L. Crossman
President/CEO
405 Perry Street
Savannah, GA 31401

Agent Authorized to Accept Service on Behalf of Above-signed Party:

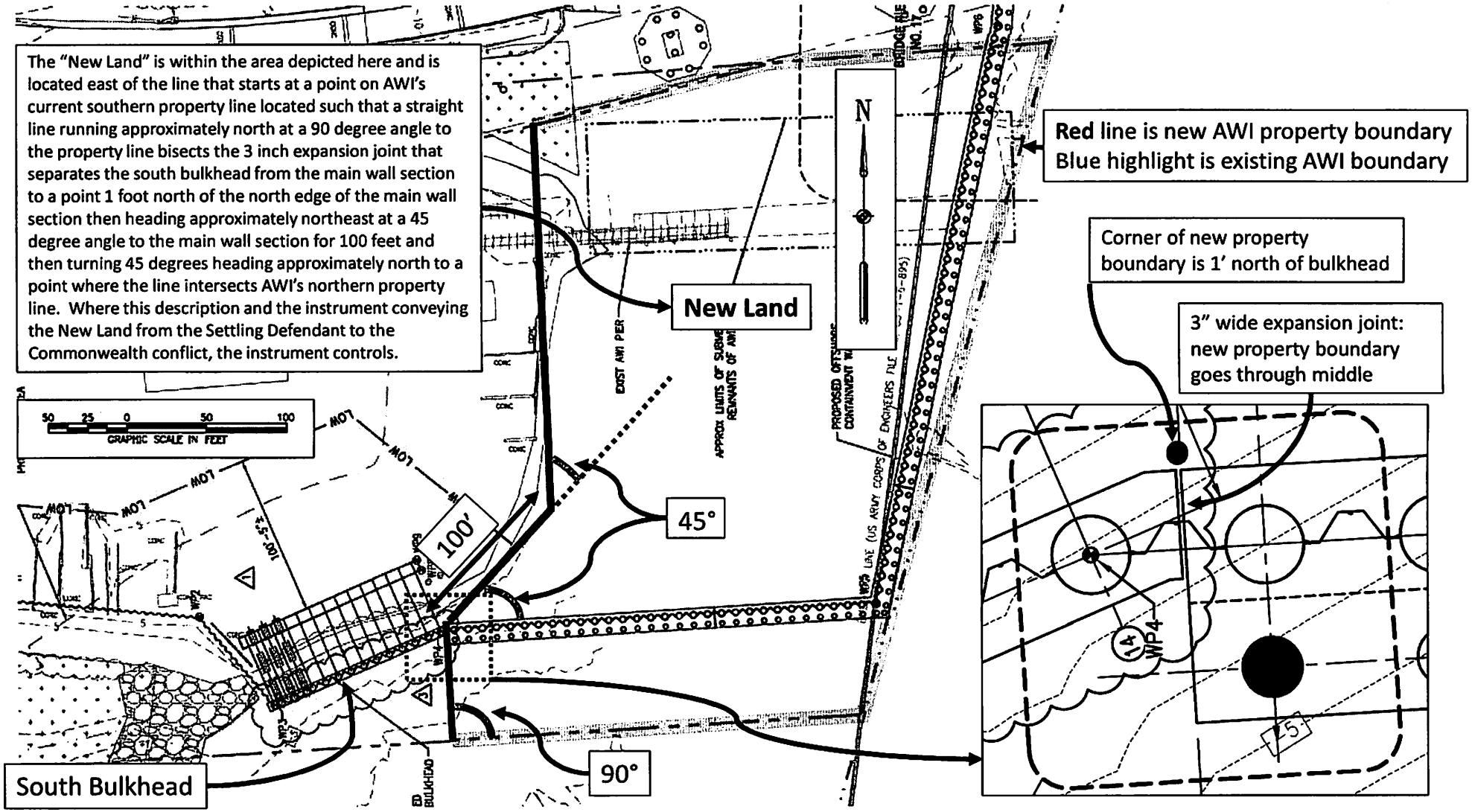
James K. Austin
Attorney
2 East Bryan Street 10th Floor
Savannah, GA 31401
Phone: (912) 233-9700
email: jaustin@epra-law.com

APPENDIX A

United States and the Commonwealth of Virginia
v.
Atlantic Wood Industries, Inc., et al

Appendix A: New Land

United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc. et al.



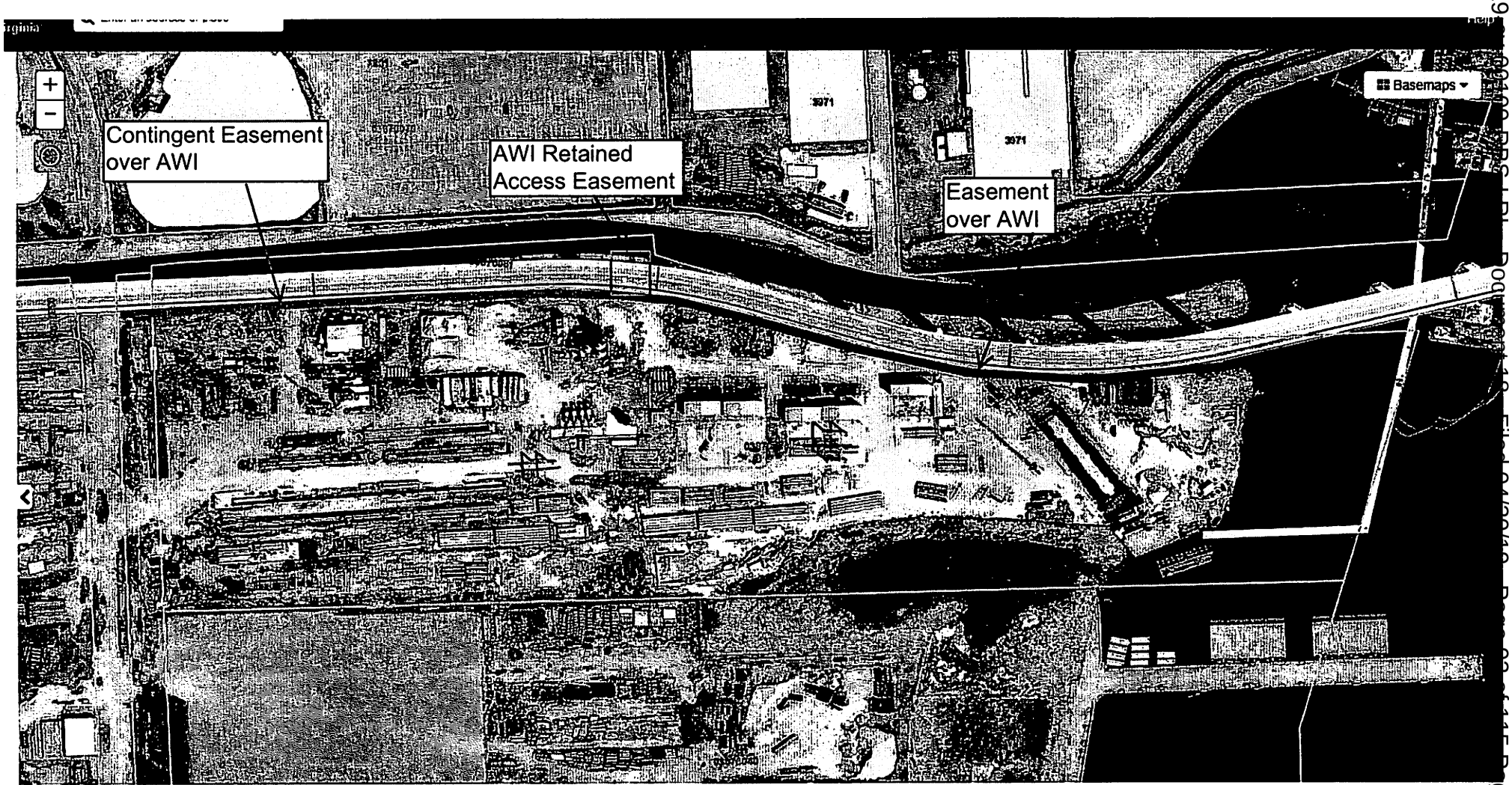
APPENDIX B

United States and the Commonwealth of Virginia
v.
Atlantic Wood Industries, Inc., et al

Appendix B: AWI Easement for Access to New Land

United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.

Approximate location of 30-foot wide easement along northern property line



Appendix C
United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc., et al.
Atlantic Wood Industries (AWI) Superfund Site, Portsmouth, VA
Operation and Maintenance (O&M) Performance Standards
Rev. 0: 9/12/2018

This document contains Operation and Maintenance (O&M) Performance Standards that AWI and/or Atlantic Metrocast, Inc. (AMI) must meet to operate and maintain the remedial action at the AWI Superfund site. The purpose of these O&M Performance Standards is to preserve the effectiveness of the AWI site selected remedy. In implementing the 2007 Record of Decision, the 2012 Explanation of Significant Differences (ESD), and the 2018 ESD, EPA is constructing a cap on AWI property (which is part of the AWI site) that will prevent direct contact with contaminated material, minimize the infiltration of precipitation through the contaminated subsurface to the groundwater. Reducing the migration of contamination to groundwater will also aide in the natural attenuation of ground water. The remedy as modified by the 2018 ESD, will allow AMI to continue the operation of its pre-cast concrete manufacturing business. These O&M Performance Standards apply to all the AWI property as well as land on which the remedy is located and where AWI operates such as the City of Portsmouth right of way (ROW) and the Portsmouth Norfolk Beltline Railroad ROW.

In AWI operating areas, the cap generally consists of a 12-inch thick low-permeable gravel cap (compacted Virginia Department of Transportation [VDOT] 21A stone) that has a permeability no greater than 1×10^{-5} centimeters per second, and is underlain by an orange marker geotextile to warn anyone who may dig into this material in the future that contaminated material exists below. To protect the gravel cap and to allow the cap to provide the bearing load requirements for equipment used by AWI, a geotextile was placed on top of the low-permeable layer,[1] followed by a geogrid, and a 4-inch wear surface layer of 21A stone.

In drainage swales and steep slopes, the cap generally consists of a 12-inch clay layer compacted to yield a permeability of no greater than 1×10^{-5} centimeters per second underlain by an orange marker geotextile to warn anyone who may dig into this material in the future that contaminated material exists below. To protect the clay layer, it is overlain by a 6-inch topsoil layer with permanent vegetation (gravel cover was placed in the bottom of the swales in lieu of topsoil).

The cap over dredged sediment west of Burtons Point Road was designed to support operation of a rubber tired gantry crane with a maximum allowable ground pressure of 78 pounds per square inch or (psi) based on a certain amount of traffic loading over a 25-year period. The cap over areas without dredged sediment both on the east and west parcels was designed to support a rubber tired gantry crane with a maximum allowable ground pressure of 120 psi based on a certain amount of traffic loading over a 25-year period. The cap over dredged sediment at the eastern-most end of the parcel east of Burtons Point Road does not have the 4-inch protective

[1] There are some areas that do not have a geotextile placed on top of the low-permeability stone. These areas include the two ramps west of Burtons Point Road and the western-most approximately 125 feet of the cap west of Burtons Point Road.

layer. Furthermore, without additional material added to the cap, it cannot support AMI's equipment.

EPA constructed a sealed pile wall adjacent to the Southern Branch of the Elizabeth River to contain contaminated dredged sediment and to prevent the discharge of contaminated ground water to the river.

AWI shall submit an O&M Manual for EPA and DEQ review and approval prior to operating on any capped area. The manual detailing how AMI intends to meet the below performance standards:

The O&M Manual, at a minimum, shall include:

a) Inspection and EPA/DEQ reporting schedule (reporting period to start at quarterly, but can be shortened or lengthened [but to no longer than annually] by agreement of EPA and DEQ)
b) Report format
c) Planned activities to ensure compliance with the Performance Standards, including a schedule where appropriate
d) Training requirements

Performance Standards

1) Stone cap
   a) Maintain the integrity and function of the stone cap:
      i) Do not allow penetration of vegetation into the 12-inch low-permeable layer
      ii) Maintain at all times a minimum of four (4) inches of VDOT 21A or other approved material on top of the low permeable layer
      iii) At the very east end of AWI's east parcel where EPA is not adding the 4-inch protective stone layer:
         (1) Do not operated in this area until adding a protective layer as approved by EPA and DEQ
         (2) The cap in this area cannot be used until a Professional Engineer registered in the State of Virginia (PE) states that the cap has the bearing capacity for the planned use
      iv) Do not allow ponded water to remain on the cap after 48 hours of the end of rainfall
   b) If the low-permeable stone layer is damaged and/or disturbed, repairs must be:
      i) Reported to EPA and DEQ within 24 hours of occurrence
      ii) Completed within two weeks of the occurrence
      iii) Completed in accordance with the material and design specifications for the cap
         (1) Stone used for this purpose must meet the VDOT 21A specification at the time of placement (i.e., stone stored for this purpose must be protected to maintain its properties)

iv) Documented as meeting the design specifications by the PE
(1) The repair documentation must be submitted to EPA and DEQ within seven days of the completion of the work

c) Any area where the protective stone is less than 4 inches and/or areas where the low-permeable layer is not fully functioning cannot be used until repaired.

d) No initiation of any new activities (i.e., those activities other than the existing pre-stressed/precast concrete manufacturing operations) including applying loads in excess of the design capacity, shall be permitted on capped areas prior to AMI obtaining written EPA and/or DEQ approval for such activities. Any request submitted to EPA and/or DEQ for approval must include a statement by a PE that the activity can be conducted in such a way as to maintain the integrity and function of the cap.

2) Clay cap
a) Maintain the integrity and function of the clay cap
i) Maintain vegetation (or stone in high drainage areas) to prevent erosion
ii) Do not allow woody vegetation larger than a 3/4-inch diameter

b) If the low-permeable clay layer is damaged and/or disturbed, repairs must be:
i) Reported to EPA and DEQ within 24 hours of occurrence
ii) Completed within two weeks of occurrence
iii) Completed in accordance with the material and design specifications
iv) Documented as meeting the material and design specifications by the PE
(1) The documentation must be submitted to EPA and DEQ within seven days of the completion of the repair.

c) Maintenance of drainage swales constructed on AWI property in accordance with Section 11.2.12 of the 2007 ROD
i) Remove vegetation (as approved by EPA and DEQ) during July of each year that is hindering flow and/or impairing the function of the swales
ii) Remove accumulated sediment from erosion as necessary for the swales to provide adequate drainage
iii) Replace and/or repair as appropriate the rock check dam at the northwest corner of the west parcel where surface water discharges from the property to ensure the check dam allows adequate drainage and filters sediment from the water

3) South Bulkhead on AWI property
a) Maintain the four-part coating of concrete pile cap at South Bulkhead
i) Repair the coating yearly if any layers other than the surface layer are visible-using the coating system applied by EPA (or approved equivalent)

b) Inspect monthly for signs of cracking or spalling of concrete, wear of concrete coating or any visible signs of collision-type damage
i) Record any cracking or spalling of concrete, wear of concrete, or any visible signs of collision-type damage in the monthly inspection log.
ii) Report any visible signs of collision-type damage to EPA and DEQ within 24 hours of discovery.

c) Annually, unless directed otherwise by EPA or DEQ, repair any damage to the concrete caused by AMI
d) Conduct and/or coordinate, as determined by EPA or DEQ, the repair of damage to the South Bulkhead caused by an AMI customer and/or contractor.

4) Wetlands
   a) Preserve the wetland area at the inlet from the Southern Branch of the Elizabeth River within the metes and bounds of property currently owned by AWI
   b) Maintain by inspecting annually
   c) Remove Phragmites, or other invasive species identified by DEQ or EPA and that DEQ or EPA requests AWI to remove, if a single species makes up more than 10% of the area between the sheet pile barrier and the property boundary
   d) Report to EPA and DEQ the estimated area of Phragmites every May
   e) Remove Phragmites (or other invasive species as requested), if necessary, during July each year

5) Other
   a) Survey every April the four corners of the pile cap on the Southern Bulkhead located on AWI property and the four corners of the concrete Junction Box 1 to track any movement of these structures over time:
      i) Collect elevation and coordinate values of each corner
      ii) Datums shall be North American Vertical Datum 1988 for vertical, and North American Datum 1983 for horizontal.
      iii) The survey must be conducted by a surveyor licensed in the Commonwealth of Virginia.
      iv) Submit to EPA and DEQ an electronic table indicating the points surveyed, horizontal coordinates, and elevations of each point within 30 calendar days of the completion of the field survey.
   b) Maintain the function of underground drainage structures on the AWI property that are installed as part of the remedy and not maintained by the City of Portsmouth:
      i) Remove sediment (or repairing damage caused by AWI) that hinders adequate drainage of water from the top of the cap.

The plan can be updated as necessary. Updates can be initiated by an AWI proposal to EPA and DEQ or a request from EPA or DEQ to AWI. Any proposed or requested update must include the rational for the desired change.

APPENDIX D

United States and the Commonwealth of Virginia
v.
Atlantic Wood Industries, Inc., et al

Appendix D to Consent Decree in *United States and Commonwealth of Virginia v. Atlantic Wood Industries, et al.*

Tax Map Parcel Nos.: 0387-0050 and 0387-0062

Prepared by: Office of the Virginia Attorney General

Remediation Program Site ID #: VAD990710410

UECA ENVIRONMENTAL COVENANT

This environmental covenant is made and entered into as of the ___ day of _____, by and between Atlantic Wood Industries, Inc., a Georgia corporation, whose address is 3904 Burtons Point Road, Portsmouth Virginia, 23704 (hereinafter referred to as the "Grantor" or "Owner"), and Atlantic Wood Industries, Inc., a Georgia corporation, whose address is 3904 Burtons Point Road, Portsmouth Virginia, 23704, (hereinafter referred to as the "Grantee" or "Holder").

The United States Environmental Protection Agency, Region III, whose address is 1650 Arch Street, Philadelphia, PA 19103, (hereinafter referred to as "EPA" or the "Agency") also joins in this environmental covenant.

This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia ("UECA"). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.

1. **Property affected**. The property affected ("Property") by this environmental covenant is located at 3904 and 3905 Burtons Point Road, Portsmouth Virginia, 23704, and is further described as follows:

   The Property is located in the southeast corner of Portsmouth County, Virginia, and is generally located south of Elm Avenue and between Victory Boulevard and the Southern Branch of the Elizabeth River. See Exhibit "A" for a detailed description of the Property.

2. **Description of Contamination & Remedy**.

   a. The Administrative Record pertaining to the environmental response project reflected in this UECA environmental covenant can be found as described immediately below:

   U.S. EPA, Region III
   6th floor Docket Room (6-301)
   Attn: Paul Van Reed
   1650 Arch Street
   Philadelphia, PA 19103

   Hours:
   Monday - Friday 8AM – 4PM
   (215) 814-3157
   (please call ahead for an appointment)

The Administrative Record for this environmental response project also can be viewed online at https://semspub.epa.gov/src/collections/03/AR/VAD990710410. For additional documentation or inquiries relating to remedy implementation, contact:

Associate Director,
Office of Superfund Site Remediation
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

b. The Property is part of the Atlantic Wood Industries, Inc. Superfund Site ("Site"), which is generally located south of the South Norfolk Jordan Bridge (Virginia Highway 337) and between Victory Blvd and the Southern Branch of the Elizabeth River in Portsmouth, Virginia. Atlantic Wood Industries, Inc. and its predecessors operated a wood treating facility at the Property from approximately 1926 to 1992. Currently, Atlantic Wood Industries, Inc. owns the Property, and its wholly owned subsidiary, Atlantic Metrocast Inc. (collectively "AWI"), operates a pre-stressed concrete manufacturing facility at the Property. Prior to dredging performed as part of the Site's cleanup, the Site included approximately 43.5 acres of industrialized waterfront land, primarily consisting of the Property, with contaminated soil and ground water, and approximately 35 acres of contaminated sediments in the river. Contaminants of concern at the Site, including the Property, include polycyclic aromatic hydrocarbons from creosote, pentachlorophenol ("PCP"), and associated dioxin; metals, such as zinc, copper, lead, antimony, cadmium, chromium, cobalt, iron, manganese, nickel, selenium, vanadium, and mercury; and calcium hydroxide.

Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth in 40 C.F.R. Part 300, Appendix B, on February 21, 1990. Early response actions conducted at the Site, including the Property, included actions undertaken by potentially responsible parties pursuant to Administrative Orders on Consent with EPA to conduct a remedial investigation/feasibility study for the Site; address creosote leaking into a storm sewer; excavate contaminated sediments in an intertidal drainage ditch at the Site; and excavate/dispose of calcium hydroxide sludge at the Site and restore wetlands.

On December 21, 2007, EPA issued a Record of Decision ("2007 ROD"), selecting a remedy to address contaminants at the Site, including the Property. Main components of the selected remedy, as described in the 2007 ROD, consist of the following: 1) a clean cover over the areas of

contaminated soil; 2) stabilization of creosote and PCP-soaked soils on the west side of the Site; 3) monitored natural attenuation (natural restoration) of ground water; 4) installation of an off-shore sheet pile wall in the Southern Branch of the Elizabeth River ("Sheet Pile Wall") to prevent creosote and metals migration to the river; 5) dredging of contaminated river sediments beyond the wall with consolidation of the dredged sediments either behind the sheet pile wall to form new land or on the west side of the Property in a landfill; 6) enhanced monitored natural recovery of sediments; 7) creation of wetlands to replace wetlands lost due to sediment consolidation behind the wall; and 8) institutional controls to further protect human health and the environment. Main components of the selected remedy have been or will be performed on the Site, including the Property. Certain remedy components, such as monitored natural attenuation and wetland replacement, have been or will be conducted at areas of the Site beyond the Property boundaries.

On August 6, 2012, EPA issued an Explanation of Significant Differences to document an increase in the volume of sediments to be dredged (discovered during the remedial design process); to update the delineation of the anticipated location of the off-shore sheet pile wall to accommodate this sediment volume increase; and to update remedy costs mainly associated with the additional volume of sediments to be dredged.

On September 17, 2018, EPA issued an Explanation of Significant Differences adjusting the size and location of the landfill at the Site that will contain contaminated sediment dredged from the River as part of the Site cleanup; providing for an improved cap over areas of the Property currently being used by AWI; providing for the construction of new concrete foundations on top of the landfill to replace ones being buried in the landfill and running electrical power to the new locations; and updating estimated costs of the selected remedy.

c. The United States, the Commonwealth of Virginia, and AWI executed a Consent Decree ("Consent Decree") in *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc. and Atlantic Metrocast, Inc., et al.*, Civil Action No. 2:18CV- (E.D. Va.), which was entered by the United States District Court for the Eastern District of Virginia, Norfolk Division, on DATE, which, among other things, requires AWI to perform certain Operations and Maintenance activities at the Property. A copy of the Consent Decree is available as part of the Administrative Record for this environmental response project.

3. **Activity & Use Limitations**.

a. The Property is subject to the following activity and use limitations, as identified in Section 11.2.16 of the 2007 ROD, which shall run with the land and become binding on Grantor and any successors, assigns, tenants, agents,

employees, and other persons under its control, until such time as this covenant may terminate as provided by law:

i. The Property shall not be used for residential or other non-industrial purposes (such as a day care center or agricultural development) that may present an unacceptable risk to human health from contamination remaining on-site after the cleanup is complete.

ii. The ground water underlying the Property is not to be used as a potable water source and is not to be pumped or otherwise altered in such a way as to cause a change in hydraulic conditions that could interfere with the ongoing protectiveness and effectiveness of the monitored natural attenuation remedy.

iii. Any activities that may take place on the Property after cleanup must not interfere with any components of the remedy and must be conducted in a manner to protect the health of construction and/or industrial workers from exposure to contaminated soil, ground water, or vapors that may intrude into a building.

iv. No disturbance of any portion of the remedy (including but not limited to the repair of underground utilities or construction of buildings or structures on the Property) is allowed unless approval is obtained in advance from the Commonwealth of Virginia Department of Environmental Quality ("VADEQ") and EPA.

v. Within thirty (30) days following any transfer of the Property, the then current owner of the Property shall prepare and submit to VADEQ and EPA for review and acceptance an Operation and Maintenance Plan to provide for Operation and Maintenance activities as described in paragraph 7 of the Consent Decree. Until approval of the new Operation and Maintenance Plan, the then current owner of the Property shall comply with the existing Operation & Maintenance Plan as approved by VADEQ and EPA.

vi. No activities can be conducted on the Property that create greater loading on the cap than the cap and the underlying soils and any other component of the remedy can sustain both at the time of the activity and over a long period of time. The cap on the dredged sediment on the Property west of Burtons Point Road was designed to support operation of a rubber tired gantry crane with a maximum allowable ground pressure of 78 pounds per square inch or psi by AWI based on a certain amount of traffic loading over a 25-year period. The cap over areas without dredged sediment both on the east and west parcels was designed to support AWI's rubber tired gantry crane with a maximum allowable ground pressure of 120 psi based on a certain amount of traffic loading over a 25-year period. The cap is unpaved and consists of compacted densely

graded aggregates. Therefore, the cap requires regular visual inspections and maintenance in order to maintain the integrity of the cap. The four-inch cover stone was placed as a wearing surface layer over the cap and it must be maintained to ensure the life of the cap. AWI, and any subsequent Property owner, must operate and store materials in a manner as to prevent punctures and degradation to the cap. The cap over dredged sediment on the very east end of the east parcel on the Property is not currently constructed to support AWI's equipment as identified above. To use that area, AWI, and any subsequent Property owner, would have to upgrade the cap in a manner approved by EPA and VADEQ.

vii. Any building to be occupied on the Property must be designed and constructed in such a manner as to not create an indoor air risk due to vapor intrusion.

viii. Any loading/unloading or other activity near the bulkhead shall be conducted in such a way as to not damage the Sheet Pile Wall. The then current owner of the Property is responsible for maintaining and/or confirming that liability insurance or other financial assurance is available to repair Sheet Pile Wall damage that may result due to loading/unloading or other activity as referred to herein.

ix. At least 30 days prior to any subsurface work occurring, the then current owner of the Property must submit a Health and Safety/Waste Management Plan in accordance with this Paragraph 3.a.ix to protect workers against exposure to contaminated soils and ground water.

1) A draft Health and Safety/Waste Management Plan shall be prepared and submitted for comment to VADEQ, EPA, and the City of Portsmouth. VADEQ and EPA shall review and approve the Health and Safety/Waste Management Plan prior to any disturbance of soil or ground water below the cap.

2) The Health and Safety/Waste Management Plan shall include a waste management section, which shall discuss procedures for testing any soil excavated post-remedial action that cannot be returned to the excavation to determine if it is a hazardous waste as defined by the Resource Conservation Recovery Act, 42 U.S.C. §§ 6901-6992. If so determined, the soils shall be handled and disposed of as such.

3) Breach of the soil cover or gravel cap is prohibited unless undertaken in accordance with the Health and Safety/Waste Management Plan described above.

4) The Health and Safety/Waste Management Plan shall include contact information identifying representatives of EPA and VADEQ to be notified by the then current owner of the Property regarding any emergency subsurface work that could result in the disturbance of the cap.

5) The final Health and Safety/Waste Management Plan for subsurface work will be sent to the City of Portsmouth, local utility companies, VADEQ, and EPA for dissemination to employees who may be called upon to undertake, inspect, or monitor subsurface work at the Property.

b. All areas of the Property shall be subject to the Activity and Use Limitations set forth in Paragraph 3.a. above.

4. **Notice of Limitations in Future Conveyances**. Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.

5. **Compliance and Use Reporting**.

a. By the end of every January following the Agency's approval of this environmental covenant until the specified remediation standards are met and the Agency agrees in writing that reporting is no longer required and whenever else requested in writing by the Agency, the then current owner of the Property shall submit, to the Agency, VADEQ, and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. The documentation submitted pursuant to this Paragraph 5.a. shall be signed by a responsible official of the then current owner of the Property, certifying as to the accuracy and completeness of the documentation submitted.

b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit to the Agency, VADEQ, and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant.

6. **Access by the Holder, the Agency, and VADEQ**. In addition to any rights already possessed by the Holder, the Agency, and VADEQ, this environmental covenant grants to the Holder, the Agency, and VADEQ, as well as their respective contractors or other representatives, a right of reasonable access to the Property for the purposes of:

   a. Conducting and maintaining any and all response actions conducted pursuant to the 2007 ROD, the 2012 and 2018 ESDs, and any subsequent amendment and ESD thereto, and for implementation of Operation and Maintenance activities required at the Site; and other response actions, including, but not limited to, the following activities:

      i. Monitoring response actions;

      ii. Verifying any data or information submitted to EPA or VADEQ;

      iii. Conducting investigations regarding contamination at or near the Site;

      iv. Obtaining samples;

      v. Assessing the need for, planning, or implementing additional response actions at or near the Site.

   b. Verifying or monitoring that no action is being taken on the Property in violation of the terms of this environmental covenant or any federal or state environmental laws or regulations;

   c. Conducting periodic reviews of any response actions, including but not limited to, reviews required by federal or state environmental laws or regulations;

   d. Enforcing or monitoring compliance with the terms, conditions and restrictions of this environmental covenant as set forth in Paragraph 3 above.

7. **Subordination**.

   Reserved.

8. **Recording & Proof & Notification**.

   a. Within 90 days after the date of the Agency's approval of this UECA environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for the City of Portsmouth. The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this UECA environmental

covenant with the aforesaid Clerk within 90 days of their execution. Any UECA environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect.

b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder, VADEQ, and the Agency within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of each locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act.

9. **Termination or Amendment**. This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with UECA. The then current owner of the Property shall provide EPA, VADEQ, and any Holder written notice of the pendency of any proceeding that could lead to a foreclosure, as referred to in Section 10.1-1245(A)(4) of the Code of Virginia, within seven calendar days of the owner's receiving notice of the pendency of such proceeding.

10. **Enforcement of environmental covenant**. This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

ACKNOWLEDGMENTS:

GRANTOR

ATLANTIC WOOD INDUSTRIES, INC.

Date:_____ By:
_____ [SEAL]
William Crossman, President

COMMONWEALTH OF VIRGINIA
CITY OF PORTSMOUTH, to wit:

On this ___ day of_____, 2018, before me, the undersigned officer, personally appeared William Crossman, President of Atlantic Wood Industries, Inc., a Georgia corporation, who acknowledged himself to be the person whose name is subscribed to this environmental covenant, and acknowledged that he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

Notary Registration# _____

_____
Notary Public

HOLDER

ATLANTIC WOOD INDUSTRIES, INC.

Date:_____ By:
_____ [SEAL]
William Crossman, President

COMMONWEALTH OF VIRGINIA
CITY OF PORTSMOUTH, to wit:

On this ___ day of_____, 2018, before me, the undersigned officer, personally appeared William Crossman, President of Atlantic Wood Industries, Inc., a Georgia corporation, who acknowledged himself to be the person whose name is subscribed to this environmental covenant, and acknowledged that he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

Notary Registration# _____

_____
Notary Public

AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APPROVED by the United States Environmental Protection Agency as required by § 10.1-1238 of the Code of Virginia.

Date:_____ By:

_____

Karen Melvin
Director, Hazardous Sites Cleanup

Division

United States Environmental

Protection Agency

Region III
1650 Arch Street
Philadelphia, PA 19103-2029

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

On this ___ day of _____, 2018, before me, the undersigned officer, personally appeared Karen Melvin who acknowledged herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that she freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

_____

Notary Public

SEEN AND RECEIVED by the Commonwealth of Virginia Department of Environmental Quality

Date:_____ By:

_____

Justin L. Williams

Land Protection and Revitalization
Division Director/Interim Enforcement
Division Director
Virginia Department of Environmental Quality
1111 E. Main St. Suite 1400
Richmond, VA 23219

APPENDIX E

United States and the Commonwealth of Virginia
v.
Atlantic Wood Industries, Inc., et al

APPENDIX E

NATURAL RESOURCE DAMAGE RESTORATION PROJECT

Overview of Restoration Project: The planned restoration project (described below) is intended to provide compensation for injuries to natural resources and their services from the release of hazardous substances at or near the Site"), as per the terms of this Consent Decree. Pursuant to Paragraph 35.c of this Consent Decree, the Settling Federal Defendant shall pay One Million, Five-Hundred Thousand dollars ($1,500,000) to the Commonwealth of Virginia toward the construction, maintenance, and monitoring of oyster reef habitat in either or both of the Southern Branch ("SBER") and the Eastern Branch of the Elizabeth River ("EBER"). Oyster restoration is both feasible and cost-efficient in the Elizabeth River due to current and ongoing reef construction projects. In addition, oyster restoration provides high ecological benefits, including improvement of water quality, habitat for fish and other aquatic organisms, a food source for other animals in the riverine environment, and an overall high level of ecological service. A combination of project qualities, including site availability, ecological benefits, cost effectiveness and availability of state oversight make oyster restoration a highly viable and valued restoration project.

Description of Restoration Project: Work required to complete the oyster restoration project includes, but may not be limited to: 1) review of available bottom mapping data for initial site selection; 2) final site survey of bottom conditions; 3) permitting; 4) contract oversight for substrate acquisition, transport, and placement; 5) seeding with oyster spat; and 6) site monitoring for project success. Substrate may include various proportions of dredge shell, shuck-house shell, crushed concrete, or stone, depending on availability and specific site limitations, with an end goal of establishing a persistent living oyster population and no net loss of substrate. Some locations within the proposed project areas receive sufficient natural spat set such that initial seeding is not necessary. Locations would be selected to the extent possible to ensure that the areas that be closed for harvest as long as possible. The restoration project will be implemented and overseen by staff from the Virginia Marine Resources Commission ("VMRC"), which have experience with prior similar projects in the immediate area, with support from the Virginia Institute of Marine Science ("VIMS"). The Commonwealth will update and provide information on the project and expenditure of funds to trustees and stakeholders.

Feasibility of Restoration Project: Oyster restoration project feasibility and cost efficiency have been demonstrated through previous project studies on the Elizabeth River. Bottom mapping, including detailed bathymetry, sediment grab points, bottom type polygons, and side-scan mosaic showing bottom hardness data exist for the areas targeted for oyster restoration. Over 123 acres within the Elizabeth River near the Site have been identified as potentially suitable for on-bottom oyster restoration, with a number of specific areas of different acreage within the river that can accommodate restoration. Because of previously completed planning and implementation of similar projects, expertise from VMRC and VIMS staff scientists, as well as the availability of qualified contractors and appropriate substrate material, oyster restoration in the Elizabeth River watershed can proceed with cost efficiency.

On-bottom oyster restoration projects have been completed in the SBER in proximity to the AWI Site. However, challenges associated with long-term oyster habitat survival in the SBER, potentially from residual metal toxicity, require that the project area include both the SBER and EBER to ensure adequate compensation for the injured resources.

Restoration Project Site Selection. Final selection of an oyster restoration project(s) shall be consistent with the terms provided in this Consent Decree and premised on best professional judgment of VMRC and VIMS staff for a reasonable likelihood of success of the project(s).

APPENDIX F

United States and the Commonwealth of Virginia
v.
Atlantic Wood Industries, Inc., et al

APPENDIX F

United States and Commonwealth of Virginia v. Atlantic Wood Industries, Inc. et al.

The following sources have been considered pertaining to the ability to pay analysis regarding AWI Acquisition Company and its subsidiaries: Atlantic Wood Industries, Inc., Atlantic Metrocast, Inc., Martin Piling & Lumber Company. The sources of this review are:

- U.S. Income Tax Returns for an "S" Corporation, (F-1120S) for 2000 through 2016 inclusive;
- Publicly available information (Internet) for years ended 2004 through 2017;
- Narrative statements and interviews with Bruce Fina, former CFO and later from Ross Worsham, VP and William Crossman, President of AWI regarding the company's net income and debt load, including "Updates on Atlantic Woods Industries' Financial Status";
- Audited financial statements for calendar years ended 2005 through July 2017;
- Consolidated balance sheets for years ended December 2009 through July 2017;
- Consolidated income statements for year ended December 2009 through July 2017;
- Cash Flow statements for year ended June 28, 2009 through July 2017;
- Personal meetings at Hunton & Williams and Troutman Sanders attorneys' law offices as well as EPA's offices with AWI's counsel, President, Vice President and Chief Financial Officer having been present;
- Telephone interviews, discussions and correspondence with Ross Worsham and Bruce Fina;
- Liens and judgments indices;
- Title Searches;
- Lender (Bank) forbearance agreements, bank default statements and covenants;
- AWI Acquisition Company and subsidiaries Consolidated Financial statements for f/y/e November 30, 2008 through the month of July 2017, including Consolidated Balance Sheets, Statements of Operations, Statements in Changes in Stockholders' equity, Statements of Cash Flows and Notes to Consolidated Financial statements; Atlantic Metrocast's 10-Year Financial Summary;
- Summary of Atlantic Wood Industries, Inc.'s payments to PNC Bank.
- Financial analysis performed by Industrial Economics, Incorporated (2010).

Insurance information produced by AWI Acquisition Corp. and its subsidiaries stem from the company's CERCLA § 104(e) responses of September 9, 1996 and September 12, 2005.